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BUREAU OF STATISTICS

CHARLES F. GETTEMY, Director

LABOR BULLETIN No. 78

LITIGATION ARISING FROM LABOR DISPUTES AND RELATED CAUSES IN THE MASSACHUSETTS COURTS.

**Supplementary to "Labor Injunctions in Massachusetts,"
published in Labor Bulletin No. 70.**



DECEMBER, 1910

**BOSTON
WRIGHT & POTTER PRINTING COMPANY
STATE PRINTERS
1910**

MASSACHUSETTS

BUREAU OF STATISTICS

Rooms 250-258, State House, Boston

The Bureau is organized into four permanent divisions: (1) the *Labor Division*, engaged in the collection and tabulation of Statistics of Strikes and Lockouts, Changes in Rates of Wages and Hours of Labor, Labor Organizations, Employment, and other data relative to the condition of labor in the Commonwealth; (2) the *Manufactures Division*, which collects and tabulates Statistics of Manufactures; (3) the *Municipal Division*, which collects and tabulates Statistics of Municipal Finances; (4) the *Free Employment Offices Division*, embracing the administration of the State Free Employment Offices, of which there are three, located respectively at 8 Kneeland Street, Boston; 24 Bridge Street, Springfield; and in the Bradford-Durfee Textile School Building, Fall River. During the period of taking and compiling the Census a fifth, the *Census Division*, is organized.

The functions of the Bureau and the duties of the Director are summarized in Sections 1 and 3 of Chapter 371 of the Acts of 1909, entitled "An Act to Provide for a Bureau of Statistics," as follows:

SECTION 1. There shall be a Bureau of Statistics, the duties of which shall be to collect, assort, arrange, and publish statistical information relative to the commercial, industrial, social, educational, and sanitary condition of the people, the productive industries of the Commonwealth, and the financial affairs of the cities and towns; to establish and maintain free employment offices as provided for by chapter four hundred and thirty-five of the acts of the year nineteen hundred and six and amendments thereof; and to take the decennial census of the Commonwealth required by the Constitution and present the results thereof in such manner as the General Court may determine.

SECTION 3. The director of the Bureau of Statistics shall annually on or before the third Wednesday in January submit to the General Court a statement summarizing the work of the bureau during the preceding year, and shall make therein such recommendations as he may deem proper. He shall also prepare annually, for distribution as public documents, a report on the statistics of labor, which shall embody statistical and other information relating especially to labor affairs in the Commonwealth; a report on the statistics of manufactures, to be gathered as hereinafter more particularly provided for; a report on the financial statistics of the cities and towns of the Commonwealth, to be gathered as hereinafter more particularly provided for; and a report covering the work of the free employment offices. . . . The director may also publish, at such intervals as he deems expedient, bulletins or special reports relative to industrial or economic matters and municipal affairs. . . .

The Commonwealth of Massachusetts

BUREAU OF STATISTICS.

LABOR BULLETIN, No. 78.

DECEMBER, 1910.

LITIGATION ARISING FROM LABOR DISPUTES AND RELATED CAUSES IN THE MASSACHUSETTS COURTS.

PREFATORY NOTE.

This Bulletin has been prepared, under the supervision of the Director of the Bureau of Statistics, by Mr. H. LaRue Brown of the Boston Bar, as a supplement to Labor Bulletin No. 70, entitled "Labor Injunctions in Massachusetts," which contained a condensed presentation of the records of cases arising from labor disputes in the Massachusetts courts from 1898 to 1908. These records have, in this publication, been brought up to date; that is to say, they include cases entered in our courts from 1908 to November 1, 1910. The field covered by the investigation has been slightly enlarged, and there have been added a few cases of earlier date as well as certain decisions of the Supreme Judicial Court of the Commonwealth which were not included in the previous Bulletin.

An important feature of this Bulletin, which it is believed will be found useful, is a collection of *dissenting opinions* of the Massachusetts Supreme Court relating to the law of labor disputes which were not included within the scope of Bulletin No. 70. The law, however, is a progressive science and the minority decisions of yesterday may become the majority of to-morrow. While, therefore, it is the majority decision which makes the law and minority opinions should always be read and quoted with a full appreciation of that fact, it seems eminently proper that the views of the minority of the court in cases involving important principles, and especially those which are closely related to the determination of great questions of industrial and social rights, should find a place in a compilation of this character.

CHARLES F. GETTEMY,

Director, Bureau of Statistics.

STATE HOUSE, BOSTON, December 15, 1910.

I.

CASES ARISING FROM LABOR DISPUTES AND RELATED CAUSES
IN THE MASSACHUSETTS COURTS.

1905.

MIDDLESEX COUNTY.

JOHN L. CONGDON *v.* THE BRADLEE &
CHATMAN COMPANY.

9368 Law.

Nov. 6, 1905. *Declaration*, in an action at law, alleging breach of a contract to employ the plaintiff at a certain rate in consideration of the plaintiff's selling out his business and coming to Boston to work for the defendant.

Nov. 17, 1906. *Judgment for defendant* by agreement.

Note.—It appears from the newspaper report of this case that the plaintiff came to Boston to replace striking employees of the defendant and was discharged upon the settlement of the strike.

1906.

SUFFOLK COUNTY.

ALLIED PRINTING TRADES COUNCIL OF
BOSTON *v.* WILLIAM D. DESMOND *et al.*

3674 Eq.

Mar. 15, 1906. *Bill* seeking to restrain the use of a title-page printed in a union shop and bearing a union label as part of a book which was not printed under union conditions.

Mar. 19, 1906. *Stipulation* by defendants that they will not issue any more such books and will remove the label from those already issued.

ALBERT W. FINLAY *v.* CITY OF BOSTON.
(Supreme Judicial Court.)

2753 Law.

Mar. 22, 1906. *Petition for mandamus* to compel the Superintendent of Printing of the city of Boston to refrain from complying with an ordinance directing him to cause all city printing to bear the union

label, "so far as it legally can do so."

Apr. 10, 1906. *Defendant's demurrer.*

Oct. 15, 1907. *Petition dismissed* after rescript from the full court. See opinion, 196 Mass. 267.

Note.—It was held that mandamus was not a proper form of remedy for the alleged grievance of petitioners who should have proceeded, if at all, under R. L., c. 25, § 100, regarding petitions to restrain the illegal expenditure of public money.

THOMAS B. HICKEY *v.* CHARLES L.
BAINE.

(Supreme Judicial Court.)

10058 Law.

Nov. 8, 1906. *Petition for mandamus* to compel the general secretary of the Boot & Shoe Workers Union to issue to petitioner a certificate of election as president of that union and to admit him to office as such.

Nov. 13, 1906. *Answer* setting forth that petitioner was not so elected at a valid election and that he had not exhausted his remedies within the organization before appealing to the courts.

May 15, 1907. *Petition dismissed* after rescript from the full court. See opinion, 195 Mass. 446.

Note.—The decision is put upon the ground that the petitioner had not exhausted his remedies within the organization before appealing to the courts.

MIDDLESEX COUNTY.

JOHN GRAHAM *v.* A. A. O'TOOLE *et al.*

1506 Eq.

May 1, 1906. *Bill* alleging the existence of a Master Plasterers' Association

of which plaintiff is a member and that said Association has a contract with the Plasterers Union by which the members of the latter agree only to work for members of the former; that defendants threaten to expel the plaintiff from the Master Plasterers' Association of which they are the officers and other members; that such expulsion would be unjust and would result in ruining the plaintiff who would be unable to carry on his business because of the impossibility of obtaining workmen.

Prays for an injunction on restraining the defendants from so expelling the plaintiff.

Note.—There were no further proceedings.

PLYMOUTH COUNTY.

WILLIAM W. ADAMS *v.* EMERSON SHOE COMPANY and EWELL-COOPER COMPANY.

6479 Eq.

Sep. 18, 1906. *Bill* by the plaintiff as an officer of the Allied Printing Trades Council setting forth that the Emerson Shoe Company had had printed in a union shop a large number of what purported to be circulars bearing the union label and that it was using them as inside covers to a catalogue which was not printed under union conditions with the intention of deceiving the public as to the union workmanship of the whole publication.

Prays for an injunction restraining the distribution of the catalogue with the label so displayed.

Sep. 29, 1906. *Injunction denied.*

Jan. 16, 1907. *Answer* denying any attempt to deceive and setting up that the printing of catalogue covers and of catalogues are two entirely different things and that the covers were obtained for the exact purpose for which they were used.

Feb. 4, 1907. *Bill dismissed* by consent of parties.

1907.

HAMPDEN COUNTY.

PAGE-STORMS DROP FORGE COMPANY *v.*

ANDREW A. BUSCH *et al.*

4130 Eq.

Sep. 16, 1907. *Bill* alleging that defendants are carrying on a strike and in aid thereof are maintaining pickets about plaintiff's place of business, are annoying and boycotting those who seek to do business with the plaintiff, and are intimidating and threatening its employees and those seeking employment from it.

Prays for temporary and perpetual injunctions restraining the acts complained of.

Sep. 19, 1907. *Hearing* upon return of order of notice.

Sep. 19, 1907. *Interlocutory decree denying* prayer for injunction except as to certain defendants who are found now to be out of the jurisdiction. "If said defendants return and are served with process an injunction may issue restraining them; with leave to renew application for temporary injunction if other and further acts which are unlawful are committed or reasonably to be apprehended.—WILLIAM CUSHING WAIT, J. S. C."

Dec. 6, 1909. *Bill dismissed*, no further action having been taken.

1908.

WORCESTER COUNTY.

DANIEL F. CARNEY *v.* THOMAS F.

SHEEHAN *et al.*

6892 Law.

Dec. 7, 1908. *Declaration* alleging that the plaintiff's employer had been induced to discharge him as the result of the instigation of the defendants who are members of Bartenders Local No. 95.

Feb. 15, 1909. *Answer* of defendants.

Feb. 5, 1910. *Verdict* for all defendants except three. *Verdict* for plaintiff against three defendants in sum of three dollars.

1909.

SUFFOLK COUNTY.

JOHN F. TOBIN *v.* MURPHY BOOT & SHOE COMPANY.

6226 Eq.

Feb. 15, 1909. *Bill* to restrain the unauthorized use by the defendant of the label of the Boot & Shoe Workers Union after surrendering contract right to use same and to forbid the use of a stamp or label resembling that of the union.

Feb. 18, 1909. *Stipulation* by defendant that it will not do the acts complained of pending the determination of the case.

Mar. 4, 1909. *Bill dismissed* by consent of the parties.

JOHN C. PIRIE *et al.* *v.* F. IRVING HOWE *et al.*

6198 Eq.

Feb. 19, 1909. *Bill* (as amended) brought by ten taxable inhabitants of Revere under R. L., c. 25, § 100, against the Auditors of Revere, setting forth a vote of a town meeting that "all printed matter hereafter done for the town of Revere shall, so far as it legally can do so, bear the imprint of the union label," and that defendants had made a contract for printing with one who could not use the union label as defendants knew.

Prays injunctions against accepting such printing and against approving bills for the payment of the same.

Apr. 8, 1909. *Defendants' demurrer sustained.*

Apr. 8, 1909. *Bill dismissed.*

Note.—In sustaining the demurrer the presiding judge filed a *memorandum* of his reasons for so doing, namely that it is doubtful whether such a bill could be brought under the statute relied upon, and further that it did not appear that the acts of the defendants complained of had in any respect injured the

town. He also intimated doubt that the ordinance in question was legally binding.

HARRY E. CHASE *v.* ARMSTRONG TRANSFER COMPANY *et al.*

(Supreme Judicial Court.)

13284 Eq.

Mar. 8, 1909. *Bill* alleging that plaintiff employs non-union men in his business; that plaintiff has a contract with the Armstrong Transfer Company for the transportation of baggage at a certain compensation; that defendants other than the Transfer Company are attempting to compel plaintiff to employ only non-union men and in pursuance of that purpose are attempting to compel the Transfer Company to break its contract with the plaintiff if the plaintiff refuses to comply with that demand; that the Transfer Company is threatening to break the contract in question and is about to terminate it in consequence of the threats to it by the other defendants that they will cause a strike of its employees unless it does so.

Prays that the Armstrong Transfer Company be restrained from breaking the contract in question and that the other defendants be restrained from calling a strike upon the Transfer Company or threatening such a strike for the purpose of compelling it so to do.

Mar. 12, 1909. *Interlocutory decree* reciting *stipulation* of all defendants that no acts shall be done pending the hearing which shall interfere with the rights, if any, of the plaintiff.

Mar. 16, 1909. *Answer of Armstrong Transfer Company* that most, if not all, of its employees are members of trades unions; that it has a contract with the plaintiff which it intends to terminate according to its terms; that it knows of no threats

of the sort alleged to have been made to it by its employees or any of the defendants; that it has joined no conspiracy for the purpose alleged and knows of none.

Mar. 16, 1909. *Answer* of the other defendants denying generally the allegations of the bill.

Mar. 29, 1909. *Memorandum of decision* by the judge presiding at the hearing as follows:

MORTON, J. The plaintiff is doing business under the name of the Chase Express Company and has a contract with the Armstrong Company under which they deliver baggage to him. The contract provides that it may be terminated by either party on thirty days notice. The Armstrong Company has given the plaintiff notice of a termination of the contract, to take effect on March 31. The employees of the Armstrong Company are all members of labor unions. None of the plaintiff's employees are. The plaintiff has performed his part of the contract to the satisfaction of the Armstrong Company, and the public has been better served than it was before the contract between him and the Armstrong Company was entered into. The plaintiff contends in substance that for the purpose of compelling him to discharge the non-union men in his employ and to employ union men the defendant unions and their members, including the individual defendants, have combined and conspired together to coerce and intimidate the Armstrong Company by means of threats of a strike amongst its employees, to give notice of the termination of the contract aforesaid, in order thereby to compel the plaintiff to discharge the non-union men in his employ and employ union men or ruin his business. The plaintiff also contends, in substance, that by giving

the notice the Armstrong Company has become a party to said combination and conspiracy.

In addition to the facts above stated I find and rule as hereinafter set forth. The fact that the plaintiff's employees were not members of labor unions was known by or communicated to the defendant unions. The matter was taken up by them and at a meeting of one of the unions a committee was appointed to wait upon the plaintiff and request permission to unionize his employees. The committee waited on him as directed and he refused their request. This was some time last Fall. The committee reported the result of their interview, and the matter was further considered by the unions and a committee was appointed to wait on the president of the Armstrong Company in relation to the delivery of baggage by the company to the plaintiff and to see if it could not be delivered to some other company. The president of the Armstrong Company is the general manager. The committee went to see him, but did not see him and saw the assistant general manager instead. At his request they called again and possibly a third time, he having in the meantime consulted with the president. The notice was sent to the plaintiff after the last interview between the committee and the assistant manager. At neither interview were any threats of a strike or any threats of any kind made by the committee if the baggage was not delivered to some other company, nor was any demand made that the Armstrong Company should terminate or break any contract which it had with the plaintiff. It did not clearly appear whether the committee or the unions knew of the contract between the Armstrong Company and the plain-

tiff, and I am unable to determine, if material, what the fact was. No intimidation was used by the committee to induce the Armstrong Company to give the notice, and no threats of any kind were made by the committee or, so far as appeared, by any members of the unions against the plaintiff. The notice to terminate the contract was given by the Armstrong Company because it feared trouble with the unions if it continued to deliver baggage to the plaintiff. It had no reason to apprehend trouble from anything that was said or done by the committee, or the unions, or any members, except such, if any, as might be inferred from the fact that in continuing to deliver baggage to the plaintiff it would be antagonizing the unions. I do not think, however, that that constitutes intimidation or coercion in the legal sense of the terms, and I so rule. There was no conspiracy or combination on the part of the Armstrong Company with the other defendants to coerce the plaintiff into discharging non-union men in his employ and employing union men, and the notice to terminate the contract was not given with any such object in view and it may or may not tend to bring about that result. The Armstrong Company acted in good faith in giving the notice, and I find and rule that it had a right to terminate the contract and that no good reason appears for restraining it from doing so even if, considering the right which it has under the contract to terminate it, the court would have the power to restrain it from so doing, which I do not pass upon. This would seem to be the end of the plaintiff's case, since an injunction against the other defendants would do him no good if the Armstrong Company is at liberty for

any reason to terminate the contract. But I do not think that there has been any unlawful interference on the part of the other defendants with the plaintiff's rights. All that the unions did was, as already observed, to appoint a committee to wait upon the president of the Armstrong Company in relation to the delivery of baggage to the plaintiff to see if it could not be delivered to some other company, and all that the committee did was to wait upon the assistant manager in accordance with the vote appointing them. I do not think that the members of the unions were guilty of an unlawful combination or conspiracy in appointing this committee, or that the committee was guilty of an unlawful interference with the plaintiff's rights in waiting upon the assistant manager as they did. It would be going too far, I think, to say that the action of the unions and the visit of the committee constituted a veiled threat of trouble if the company continued to deliver baggage to the plaintiff and should be regarded from the very nature of the case as intimidatory, and as so intended. I rule, for the purposes of this case, that the defendant unions and their members had no right to induce the Armstrong Company to terminate the contract with the plaintiff, but I do not find that they have done so. I do not forget the fact that a menace may be conveyed by words that are seemingly pacific, and the hostile attitude of labor unions towards non-union men and their employers is a matter of which the court may almost take judicial notice. But there must be something more than mere suspicion to warrant a finding of unlawful interference with the rights of another and I am unable to find that something in this case.

So far as the rulings and findings requested are consistent with the rulings and findings herein contained they are made and given, and so far as they are inconsistent therewith they are refused.

The result is that I think that the bill should be dismissed with costs, and it is so ordered.

Apr. 10, 1909. *Final decree* dismissing the bill with costs.

JACKSON H. TOWNSEND *v.* EDWARD J. MCGIVERN *et als.*

6698 Eq.

Aug. 27, 1909. *Bill* setting forth the existence of a strike ordered by the Plasterers Union, persuasion of plaintiff's employees to quit work and to break written contracts with the plaintiff, picketing, and the use of threats and other unlawful intimidation.

Sep. 3, 1909. *Bill dismissed* by agreement.

HARRIS SIDMAN *et al.* *v.* LOUIS GETZ *et al.*

6729 Eq.

Sep. 10, 1909. *Bill* alleging existence of a strike among the employees of the plaintiffs; that members of the union in question have been coerced into joining it by fines and threats of expulsion from the organization; picketing and patrolling of the neighborhood of plaintiffs' shops, annoyance of and threats to employees and customers of plaintiffs, assaults and abusive language.

Prays for injunctions against acts complained of.

Sep. 13, 1909. *Temporary injunction* issued after hearing upon return of order of notice restraining defendants from inducing persons under contract with the plaintiffs from breaking such contracts; from causing workmen to leave plaintiffs' employment by imposing or threatening to impose fines, expulsion, or

other penalties; from picketing and the use of threats or violent conduct, "and from in any way interfering with the business of the several complainants or with the workmen or employees or persons desiring to enter into contracts of employment with the several complainants under the further order of the said Court or some Justice thereof."

Sep. 29, 1909. *Petition for contempt* alleging violation of injunction by various acts of interference with workmen by whom it was sought to replace strikers.

Nov. 4, 1909. *Petition dismissed* upon a finding by the presiding judge that the charges had not been proved.

Nov. 24, 1909. *Amended bill* alleging that the strike was unlawful because it involved breach of subsisting contracts to work and also because it was a strike against the "open shop."

Prays that the injunction be modified to forbid also the payment of strike benefits and the giving or seeking of assistance in carrying on the strike. [See note.]

Dec. 3, 1909. *Defendants' demurrer* and answer.

Mar. 10, 1910. *Petition for contempt* for violation of the temporary injunction.

Mar. 23, 1910. *Master's report* setting forth that the parties had reached an agreement for the disposition of the matter.

Note.—The injunction apparently was not so modified.

LOUIS TRUDEAU *v.* JOHN H. KEIRNAN *et al.*

6867 Eq.

Nov. 6, 1909. *Bill* alleging that the plaintiff is a non-union workman and that defendants have conspired to compel him to join their union by preventing his obtaining em-

ployment unless he does so, and in pursuance of that effort have caused a strike upon his employer in order to coerce the employer to discharge the plaintiff.

Prays injunctions against intimidation of employer by strikes or threats to injure business in aid of the foregoing purpose.

Nov. 10, 1909. *Stipulation* by defendants that they will not do the acts complained of pending the litigation.

Nov. 15, 1909. *Temporary injunction* as prayed for.

Nov. 23, 1909. *Amended bill* adding allegation that defendants threaten a sympathetic strike upon customers of plaintiff's employer.

Nov. 17, 1909. *Petition for contempt* alleging that one of the defendants had threatened a customer of plaintiff's employer with a strike in order to compel him to exert pressure upon plaintiff's employer to induce him to discharge plaintiff.

Nov. 26, 1909. *Hearing on petition for contempt*. Respondent found guilty and ordered to pay a fine of \$100.

Dec. 15, 1909. *Bill dismissed* by agreement.

MIDDLESEX COUNTY.

E. W. NORDGREN v. BROCKTON DIE COMPANY.

15987 Law.

Apr. 5, 1909. *Declaration* in an action at law for alleged breach of agreement to hire the plaintiff for one year at a fixed rate.

Jun. 13, 1909. *Agreement that judgment should be entered for neither party*.

Note.—It appears from a newspaper report that the defence to plaintiff's claim was that the defendant offered the plaintiff work which plaintiff refused to do because it was outside the jurisdiction of his craft as defined by the rules of the union.

GERALD E. BUDD v. CARL E. NORDSTROM
et al.

(Supreme Judicial Court.)

1448½ Eq.

Jun. 24, 1909. *Bill* alleging that defendants who are the officers and members of Local No. 362, Brotherhood of Painters, Decorators, and Paperhangers of America, of which plaintiff formerly was a member, have imposed a certain fine upon the plaintiff and have combined not to work with him until the fine is paid and have thereby forced plaintiff's employer to discharge him and that defendants threaten to publish throughout the country that plaintiff has been expelled from the union.

Prays injunctions against combining to prevent plaintiff from getting employment or retaining it and against publishing that he has ceased to be a member of the union, etc.

Jun. 29, 1909. *Temporary injunction* restraining the defendants from the use of force, threats, or other intimidation in order to compel any person to discharge plaintiff or to refrain from employing him and "from in any manner interfering with the plaintiff in the practise of his trade or occupation or preventing the plaintiff from obtaining further employment in the same"

Jun. 29, 1909. *Defendants' answer*.

Sep. 15, 1909. *Order for decree*, after hearing, restraining defendants from "doing any act in furtherance of a design to coerce . . . [the plaintiff] . . . into paying said fine . . .", and ordering certain named defendants to pay damages in the sum of \$50.

Sep. 15, 1909. *Memorandum* by Rugg, J., of reasons for above order.

Sep. 24, 1909. *Final decree of perpetual injunction* accordingly.

ESSEX COUNTY.

WILLIAM F. CASS *et al.* v. JOHN COUHIG
et al.

524 Eq.

Oct. 28, 1909. *Bill* alleging strike, persuasion, and coercion of employees to quit work; picketing, patrolling, following of employees, processions, and demonstrations about plaintiff's premises.

Prays injunctions against acts complained of.

Oct. 29, 1909. *Stipulation* by defendants.

Nov. 2, 1909. *Temporary injunction* forbidding intimidation of employees or those seeking employment and interference with customers of the plaintiff.

EDWARD T. REYNOLDS *et als.* v. GEO. H.
E. DAVIS *et als.*

116 Eq.

(For the previous record of this case, see Labor Bulletin, No. 70, pp. 82, 140, and 149.)

Dec. 23, 1909. *Petition for contempt* alleging a violation of the various restraining orders therefore issued in this case.

Jan. 17, 1910. *Petition dismissed after hearing.*

WORCESTER COUNTY.

MARIANO DE MINICO v. DAVID CRAIG *et al.*

(Supreme Judicial Court.)

1234 Law.

Jul. 15, 1909. *Bill* alleging that defendants who are members of a Granite Cutters Union have brought about the discharge of the plaintiff from his employment as foreman by threatening his employer with the continuance of a strike called for the purpose of compelling such discharge; that the members of the union in question have been coerced to take part in said strike by threats of fines and other penalties.

Prays for injunctions forbidding de-

fendants to interfere with the plaintiff in his employment by threatening trouble to persons who might wish to employ him and against causing strikes for the purpose of inducing plaintiff's employers to discharge him or threatening the same, or attempting to make such threats effective by the imposition of fines or penalties or in any other manner interfering with plaintiff in his employment by methods which include the putting of any person in fear of loss or trouble, and for damages.

Jul. 21, 1909. *Answer* denying the allegations of the bill so far as they set forth the use of any sort of intimidation in aid of the purpose alleged.

Apr. 8, 1910. *Master's report* finding that there had been dissatisfaction with plaintiff as a foreman on the part of the men although his work was satisfactory to his employers who had discharged him only under pressure of a strike; that the men had no objection to working with plaintiff as a journeyman, but did not want him as foreman; that the men who went on strike were not actuated thereto by fear of fines or other penalties but struck simply because the union had voted to strike; that the only threat directed to the company was contained in the vote to strike and the refusal of the men to continue work under plaintiff as foreman; that the strike was called in a manner not entirely in accordance with the union rules and by a vote in which workmen employed in other plants largely participated; that plaintiff has been able to secure and to retain continuously employment as a journeyman by the same employers as before.

May 31, 1910. *Reservation* of the case for the determination of the full court.

HAMPDEN COUNTY.

AUGUSTUS A. PARISEAU *et als.* v. GEORGE F. PEARSON *et als.*

5635 Law.

Nov. 12, 1909. *Bill* alleging that complainants are members of the union which defendants represent; that plaintiffs have been threatened with fines and suspension although they have had no notice of charges against them and no hearing upon any charges; that they believe that defendants will bring about their suspension and will make it impossible for them to earn their livelihood by filling their contracts with the Gilmore Theatre in Springfield.

Prays injunction restraining any action imposing fines or suspensions upon plaintiffs and protecting the plaintiffs in their rights and privileges as members of the union in question.

Nov. 12, 1909. *Temporary injunction*, as prayed for, to remain in force until November 15, 1909, or further order of court.

1910.

SUFFOLK COUNTY.

ARCHIBALD T. SAMPSON v. COLIN W. CAMERON *et al.*

7133 Eq.

Feb. 10, 1910. *Bill* alleging that plaintiff has contracts to perform work for certain persons and that certain of the defendants, who are members of the Building Trades Council and other labor organizations of Lynn, are attempting to persuade some of such persons to break their contracts with the plaintiff.

Prays injunctions forbidding the defendants from seeking further to persuade the said persons from breaking their contracts with the plaintiff and against the breach of such a contract on the part of one of such persons who is named as a defendant.

Mar. 19, 1910. *Temporary injunction*, as prayed for, accompanied by a

memorandum of the reasons of the presiding judge in allowing the same to issue.

Mar. 28, 1910. Apr. 2, 1910. Apr. 7, 1910. *Answers* of various defendants.

WILBUR-SHUBERT THEATRE COMPANY v. FREDERICK C. KINGMAN *et als.*

7235 Eq.

Mar. 29, 1910. *Bill* alleging that the plaintiff has made a contract with its musicians for a period of five years at the union rate of wages in force at the time when the contract was made; that said musicians are willing to perform the contract and to furnish their services at the rate therein specified; that the defendants threaten to suspend the musicians from their union unless the rate of compensation is raised to the advanced union rate now in force.

Prays injunctions against the imposition of fines, suspension, or other penalties upon the musicians in question if they continue to serve the plaintiff in accordance with the contract and against inducing a breach of said contract.

Apr. 9, 1910. *Stipulation* by defendants that no action will be taken against the musicians in question pending the determination of the litigation.

Jun. 22, 1910. *Reference* of the matter to a master.

Nov. 11, 1910. *Master's Report*.

L. P. SOULE & SON COMPANY v. JEREMIAH WILLIAMS *et al.*

(Supreme Judicial Court.)

14924 Eq.

Apr. 23, 1910. *Bill* alleging that plaintiff has made a contract with certain of the defendants for doing certain masonry and brick work on buildings under construction for these defendants; that others of the defendants, being members of certain labor unions, had threatened the

defendants previously named with a general strike of the workmen employed upon said buildings if the contract with the plaintiff was not terminated upon the refusal of the plaintiff to employ only union men; that in consequence of that threat the defendants have attempted to terminate their contract with the plaintiff; that the defendants who represent the unions in question have placed pickets about the building in question and are endeavoring unlawfully to interfere with the plaintiff in its work under said contract.

Prays for injunctions against such attempted termination of the contract and against interference with the plaintiff in its endeavors to perform the same.

May 10, 1910. *Answer* of the defendants other than the members of the labor unions in question to the effect that they have terminated the contract with the plaintiff by authority of a certificate from the architect to the effect that the work was not being properly conducted by the plaintiff.

May 12, 1910. *Answer* of the defendants representing the unions in question denying the allegations in the plaintiff's bill.

May 13, 1910. *Memorandum of findings*, by Rugg, J., after hearing, to the effect that the plaintiff has prosecuted the work under the contract properly and that the real reason for the termination of the contract was as alleged in the plaintiff's bill.

Jun. 17, 1910. *Final decree* enjoining attempts on the part of the defendant unions to compel the plaintiffs to refrain from employing non-union men and to cause the breaking of the contract in question by coercion directed to either of the contracting parties; and enjoining the other defendants from breaking or seeking

to break or terminate their contract with the plaintiff for reasons growing out of plaintiff's difficulties with organized labor.

Jun. 29, 1910. *Appeal* from the final decree.

DANIEL J. McDONALD *v.* ANCHOR LINO-TYPE PRINTING COMPANY.

7358 Eq.

May 11, 1910. *Bill* brought by plaintiff, as secretary of the Allied Printing Trades Council of Boston, alleging that said council owns a registered union label and seeking to restrain the unauthorized use thereof by the defendant.

May 11, 1910. *Ad interim injunction* forbidding the use of the combined words Allied Printing { Union Label Trades Council either by themselves or in combination with other words in connection with them or any label on which is printed those words or the use of any counterfeit or imitation thereof.

May 16, 1910. *Ad interim injunction continued* until further order of Court.

May 27, 1910. *Defendant's demurrer* on ground that there is no remedy in equity for alleged grievance overruled.

May 31, 1910. *Appeal* by defendant from order overruling the demurrer.

FRANK R. HILLIARD *et al.* *v.* C. F. HARRINGTON *et al.*

7457 Eq.

Jun. 17, 1910. *Bill* alleging the existence of a strike, picketing, patrolling, annoyance, and intimidation of workmen, publishing of plaintiffs as "unfair," etc.

Jun. 21, 1910. *Temporary injunction* forbidding interference with plaintiffs' employees by threats or intimidation, picketing of plaintiffs' factory or patrolling of neighbor-

hood, interference with contracts, etc.

MEAD-MORRISON MANUFACTURING COMPANY v. FRANK JENNINGS *et als.*

7511 Eq.

Jul. 14, 1910. *Bill* alleging strike, picketing, congregating about plaintiff's place of business and patrolling of the neighborhood, intimidation of plaintiff's employees, interference with plaintiff's customers and threats to them, demonstrations at boarding places of employees, and placing of plaintiff on an "unfair" list.

Prays for temporary and perpetual injunctions against the acts complained of.

Jul. 19, 1910. *Temporary injunction* as prayed for.

LUCIUS A. FOLSOM *et al.* v. GEORGE F. LEWIS *et als.*

7527 Eq.

Jul. 21, 1910. *Bill* alleging the existence of a strike against the employing photo-engravers of Boston for the purpose of compelling them to conduct their business upon the "closed shop" principle. That there has been picketing and intimidation of employees, inducement to break formal contracts of employment, and the use of boycott and the unfair list.

Prays an injunction against calling or continuing strike in question for the purpose of compelling recognition of the union and the institution of the closed shop.

Jul. 29, 1910. *Temporary injunction* as prayed for accompanied by a *memorandum* of the presiding judge who finds that the strike was called for the purposes alleged, although there had been no actual intimidation other than "a moral intimidation and fear of loss quite as effectual as fear of physical harm." The injunction restrained the defendants from "in any way intimidating or

inducing [the plaintiffs'] workmen whether members of the union or not to leave the employment of the plaintiffs for any reason shown in this case."

Aug. 9, 1910. *Answer of defendants* denying generally the allegations of the bill and averring that the demand for a "closed shop" was only one of several demands, all of which were refused by the plaintiffs.

Oct. 17, 1910. *Master's report.* The master finds that there were no individual grievances between employers and employees about wages, hours of labor and the like: that the strike was a strike for a "closed shop" although questions of reduction of hours, regulations of apprentices, etc., had been considered. That there had been no violence or threats and that the persuasion used had been peaceable. That there had been a few cases of breach of formal contracts, but that in most of them the existence of a formal contract was unknown to the defendants.

Oct. 31, 1910. *Final decree* of perpetual injunction forbidding any persuasion of employees to leave plaintiffs' employment and forbidding the continuance of the strike in question or the paying of strike benefits in aid thereof.

Nov. 7, 1910. *Petition in contempt* setting forth that defendants have continued to pay strike benefits and to induce plaintiffs' employees to continue the strike in violation of the perpetual injunction.

Dec. 12, 1910. *Petition dismissed.* The order discharging the defendants was accompanied by a memorandum of the presiding justice in which, after a review of the case, it was pointed out that there was no evidence of any violation of the injunctions except as to that clause which prohibits the "continuing or proceeding with the strike already

called." It is held that the only evidence of violation of this prohibition was as to the payment of certain "out of work benefits" which were paid from money collected by the International Photo Engravers Union at its headquarters in Philadelphia. It is said that as a matter of law the International Photo Engravers Union is not a thing or entity known to the law but is merely, so far as appears, an aggregation of individuals. It is found that before the injunction in question went into effect, a meeting was had at which all the striking employees then in Boston and out of employment were present and voting and at which the strike was declared off, and that there is no evidence to show that such vote was not had in good faith or that the striking employees *as members of the union* continued to refuse to return to work.

The memorandum concluded "Upon the evidence, I find the strike was called off before the issuance of the final decree, and that neither the defendants nor the union as such have since acted in violation of its commands."

(Signed) EDWARD T. PIERCE,
J. S. C.

7553. Suffolk Eng. Co. *v.* Lewis *et als.*

7561. Dunbar Engraving Co. *v.* Lewis *et als.*

7562. Jas. P. Burbank *et als v.* Lewis *et als.*

7563. Addis W. Dempsey *et als. v.* Lewis *et als.*

7565. W. J. Dobinson *v.* Lewis *et als.*

7564. Sparrel Print *v.* Lewis *et als.*

7566. F. O. Clark Engraving Co. *v.* Lewis *et als.*

7567. Edward C. Tripp *v.* Lewis *et als.*

7609. Wm. B. Wright *v.* Lewis *et als.*

WILLIAM JOHNSON *v.* LEWIS C. HURLBERT *et al.*

7537 Eq.

Jul. 26, 1910. *Bill* alleging a strike at plaintiff's plant conducted by defendant officers and members of Local Assembly No. 1820 of the Knights of Labor.

Note. — The allegations and the relief asked are substantially like those in the previous case.

Jul. 28, 1910. *Temporary injunction* as prayed for.

HORACE E. WHITTEN *et al. v.* GILCHRIST COMPANY *et al.*

7542 Eq.

Jul. 28, 1910. *Bill* alleging that plaintiff has a contract to install a heating plant for the named defendant and that the other defendants, the members of the Boston Building Trades Council, have conspired to compel the plaintiffs to hire only union men, and in pursuance of that conspiracy have threatened the Gilchrist Company with a general strike of the workmen employed upon the building under construction for it unless it breaks its said contract with the plaintiffs.

Prays injunction against such breach of contract and against threatening the Gilchrist Company with injury or the doing of such injury for the purpose of compelling it to break the contract.

Note. — An order of notice was issued in this case but the matter was settled among the parties without a hearing.

S. A. WOODS MACHINE COMPANY *v.* JOSEPH H. GILMOUR *et al.*

7560 Eq.

Aug. 4, 1910. *Bill* making substantially the same allegations as those in *Mead-Morrison Co. v. Jennings*, *supra.*

Aug. 9, 1910. *Temporary injunction* allowed after hearing.

THE J. W. MOORE MACHINE COMPANY
v. FRANK JENNINGS *et al.*

7640 Eq.

Sep. 15, 1910. *Bill* substantially identical with that in *Mead-Morrison Co. v. Jennings, supra.*

Sep. 27, 1910. *Stipulation* that pending further hearing of the case, defendants will not do any of the acts complained of.

THE MASTER BUILDERS' ASSOCIATION *et als.*
v. CITY OF BOSTON *et als.*

7692 Eq.

Oct. 14, 1910. *Petition* brought by The Master Builders' Association, a corporation, and eleven other persons, taxable inhabitants of Boston under the R. L., c. 25, sec. 100, against the city of Boston, the Treasurer, the Superintendent of Public Buildings of said city, and Peter F. Dolan of said Boston, doing business under the name of Dolan Electric Company, alleging that in March, 1910, the city, through its Superintendent of Public Buildings, advertised for bids for installing electrical apparatus in a certain building, said advertisement concluding with the statement: "that the undersigned Superintendent of Public Buildings reserves the right to reject any and all proposals, and to give preference to the bidders paying the trades union rate of wages;" that James Wilkinson & Co. was the lowest bidder and duly complied with all the requirements of said advertisement, and was amply able, both financially and otherwise, to perform the work; that the Superintendent of Public Buildings refused to award the contract to said James Wilkinson & Co. for the sole reason that the firm was "unfair to union labor," and because he was informed and believed that it did not pay the trades union rate of wages to all of its employees, and

awarded the contract to the Defendant Dolan who was the next lowest bidder; that the contract as awarded provides among other things that "The contractor shall give preference in employment on work to be done in the city, first, to registered voters of the city; second, to other citizens of the city; third, to citizens of the Commonwealth, and if they cannot be had in sufficient numbers, then citizens of the United States; . . . unless authorized in writing by the architect, pay all employees on any such work no less wages than is customary in said city in their several employments; and no . . . workman . . . in the employ of the contractor . . . shall be requested or required to work more than eight hours in any one calendar day:" that said Defendant Fish and said city acted in violation of the law in not awarding said contract to said James Wilkinson & Co. for reasons aforesaid; and also acted in violation of law in awarding said contract to said Defendant Dolan not only for the reasons aforesaid, but on account of the illegal requirements imposed upon said Contractor Dolan . . . and particularly in its requirement that no workman in the employ of said Defendant Dolan should be required to work more than eight hours in any one day; and further that said Defendant Dolan was required to pay all employees on the work on said contract no less wages than is customary in said city in their respective employments.

Prayer: That the defendant city and the defendant Fish as its Superintendent of Public Buildings be enjoined from the carrying out of said contract, and that said defendant Dolan be enjoined from doing any act under said contract.

Oct. 19, 1910. *Temporary injunction* ordered after hearing.

Note.—In ordering the *temporary injunction*, Richardson, J., said in substance that in his opinion the provision of the contract regarding hours of labor was valid and that relating to wages was invalid. He added that the evidence seemed to show "that the contract was given to a contractor other than the lowest bidder in order, directly or indirectly, or both, to favor trade unions and their interests. This as a public officer, using public money, the Superintendent had no right to do." He thought the contract illegal.

M. STEINERT & SONS COMPANY v.
GEORGE F. TAGEN *et al.*

7701 Eq.

Oct. 20, 1910. *Bill* alleging the previous existence of a strike among the teamsters and piano movers employed by the plaintiff, which is said to have been terminated by the replacement of the striking employees who in turn have found employment elsewhere. That individual defendants for the purpose of injuring the plaintiff have caused to be driven through the streets of Boston a wagon bearing a placard of which is stated that "The union teamsters are on strike for hours and wages at the following places:" That the plaintiff is named as one of the employers against whom the strike is in progress. That the statement as to the plaintiff is untrue and that it is intended to injure and does injure the plaintiff in its business.

Prays an injunction forbidding the display of such a placard.

Oct. 24, 1910. *Upon return of order of notice* to show cause why a temporary injunction should not issue as prayed for it was stated to the Court that the defendants had ceased to display the placard in

question, and no injunction was issued.

Oct. 29, 1910. *Answer* of defendants denying that the strike is no longer in existence or that the purpose of the placard was other than legitimately to inform persons properly interested of the facts as they exist.

FRED J. THOMPSON v. DESIRE H. HOULE
et al.

7772 Eq.

Nov. 23, 1910. *Bill* alleging that the plaintiff is a shoe manufacturer who has conducted his business as an open shop; that the defendants, members of the Shoe Workers Protective Union, have threatened to call a strike for the purpose of compelling the plaintiff to conduct his business as a closed shop; that they have threatened employees of the plaintiff with injury unless they complied with the demands of the defendants by refusing to work for the plaintiff and have endeavored by persuasion and intimidation to cause the plaintiff's employees to leave his employ for the purpose aforesaid.

Prays an injunction restraining defendants from seeking to cause or causing a strike among the plaintiff's employees for the purpose of compelling the plaintiff to carry on his business as a closed shop and also from interfering with the plaintiff by intimidation or annoyance of his employees.

Nov. 30, 1910. *Return of order of notice.* [It appeared that Pierce J. declined to issue a restraining order pending further hearing upon the assurance of the defendants' attorneys that no strike would be called in the meantime.]

Dec. 5, 1910. *Defendant's answer* denying that a strike in the plaintiff's factory has been called or is contemplated by the defendants.

Dec. 12, 1910. *Memorandum of findings of facts*, after hearing. It is found that upon the expiration of an agreement with the union, plaintiff determined to run an open shop. He had only one non-union employee who "in consequence of remarks which he heard, in part at least, outside of the shop" made application for membership in the union. Visits were made to the shop by an officer of the union,

and there had been some slight friction between him and the management. The memorandum concluded "Upon all the evidence presented, I find the acts complained of did not amount to a sufficient basis for the plaintiff's apprehension of trouble and the order must be "*Bill dismissed.*"

LORANUS E. HITCHCOCK, J. S. C.

Dec. 12, 1910. *Bill dismissed.*

II.

DECISIONS OF THE SUPREME JUDICIAL COURT.

Two of the cases previously noted were taken upon appeal to the full bench of the Supreme Judicial Court. The decisions handed down by that court are here printed in full.

THOMAS B. HICKEY *v.* CHARLES L. BAINÉ.

CHARLES P. MURRAY *v.* CHARLES L. BAINÉ.

SUFFOLK. 1907.

195 Mass. 446.

Mandamus.

One who claimed to be aggrieved by the action of the general executive board in refusing to recognize him as the duly elected president of an unincorporated national trade union was *held* not to be entitled, without prosecuting an appeal from the action of the general executive board to a convention of the organization, to maintain a petition for a writ of mandamus directing the general secretary to issue to him credentials of his election, he not having exhausted his remedy within the organization.

Two *Petitions* for writs of mandamus directing the defendant, the general secretary-treasurer of the Boot and Shoe Workers Union, to issue to the petitioners certificates of their election as general president and general vice-president, respectively, of that organization, filed November 8, 1906.

The petitioners and the respondent were members of the Boot and Shoe Workers Union, a voluntary national organization "composed of male and female boot and shoe workers organized in local unions or as members at large." In the constitution of the organization appear the following:

Under the heading "Government,"—

SECTION 3. The government of all local unions and members shall be vested in this general union as the supreme head, to which all matters of general importance

shall be referred and whose decision shall be final.

The administrative power of this general union, when not in convention, shall be vested in the general officers, subject to control of joint action of the general executive board. . . .

Under the heading "General Executive Board," it is provided that such board shall

hold all property as trustees, have power to require of any officer full detailed statements of the business of the office, have power by majority vote to remove any officer for unfaithfulness or incompetency, hire suitable headquarters as directed by union, decide appeals from decision of general president, decide all questions of usage wherein the constitution is silent, issue and revoke charters, levy assessments when they deem it necessary, perform such other duties as this constitution may provide, and at all times consider the welfare of the organization superior to persons and places in arriving at decisions.

Under the heading "Election of General Officers, General Executive Board and General Auditors," it is provided that such officers

shall be elected annually by a popular vote. The candidate receiving the largest number of votes shall be declared elected.

Under the same heading occur the following:

SECTION 19. During August the general executive board shall select three local unions, each of which unions shall elect by written ballot one member in good standing who is not a candidate for any national office, to serve as general inspectors of election. Each union so selected shall

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notify the general secretary-treasurer of the name and address of the member elected, and shall give the member a certificate of election to be presented at headquarters.

SECTION 20. The general inspectors of election shall meet . . . the Monday after election, and in the presence of each other open the envelopes or boxes containing the votes, etc., and proceed to count the ballots, and at 10 A.M. on the second Monday after election they shall declare the polls closed, ascertain and verify the result of the election, and they shall at once prepare a report of the same to be submitted to the local unions by the general secretary-treasurer. They shall place all votes, etc., together with a copy of their report, in a box, which shall be closed and sealed by them, and kept in headquarters, subject to the order of the general union.

The report of the general inspectors of election shall be forwarded to the local unions within ten days after the result is announced.

Any candidate may demand and receive a recount upon the petition of one joint council or five local unions, provided such petition is presented within thirty days after announcement of the general inspectors of elections.

Candidates for general president, vice-president, secretary-treasurer and general executive board may have one representative present during the recount of the ballots. . . .

SECTION 21. All officers shall be installed by mail and take office on the first of the month succeeding the completion of the election.

Under the heading "Appeals," —

SECTION 106. Appeals against the decision of any officer, committee, board, union or council shall be presented in writing to the next highest authority, and no appeals shall be considered unless the appellant conforms to the decision appealed from, pending decision on the appeal.

Under the heading "Conventions," —

SECTION 108. A convention shall be called for the third Monday in June, provided a majority of all local unions have in the preceding January, voted in favor of holding same, and special conventions may be called at any time on official vote

and request of a majority of all local unions.

The defendant was the general secretary-treasurer of the organization.

On September 13, 1906, elections were held in the various component local unions. At these elections John F. Tobin and Thomas B. Hickey, the petitioner, were the only candidates for president, and Collis Lovely and Charles P. Murray, the petitioner, were the only candidates for vice-president. The ballots cast at the local unions were sent to the general offices in Boston, and there came into the hands of the lawfully constituted board of inspectors of elections, provided for by section 20 of the constitution. This board voted by a majority vote to make a report declaring the petitioners elected general president and general vice-president respectively. Michael H. Lydon sent a "minority report" stating:

If this ballot is to stand, I would throw out the entire vote of Unions No. 44 and No. 192 as being the most flagrant cases of wholesale fraud, and would declare the following results:

For General President — John F. Tobin received 4,965 votes; Thos. B. Hickey received 4,637 votes. John F. Tobin having received the highest vote is hereby declared elected.

For General Vice-President — Collis Lovely received 4,636 votes; Chas. P. Murray received 4,299 votes. Collis Lovely having received the highest vote is hereby declared elected.

His report closes:

I hereby appeal to the general executive board, that they may take notice of the many irregularities as discovered by the inspectors of election, and adopt the minority report; or, what might be better still, to immediately take steps to the end that a new election be held, so that the wishes of the members may be clearly understood.

The general secretary-treasurer sent letters to all the local unions enclosing copies of both reports and stating that

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the general executive board would meet at Boston on October 24, 1906,

for the purpose of considering and taking action on the two reports submitted by the general inspector.

On October 23, 1906, the petitioner Hickey addressed a letter to the general executive board in which he protested against any interference with the report made by the majority of the general inspectors of elections and stated his purpose of appealing to the courts.

The general executive board voted to "sustain the appeal of M. H. Lydon and order a new election to fill the offices of general president and general vice-president, the same candidates to contest," and subsequently ordered such election to be held on December 6, 1906, giving notice to the local unions on October 29, 1906.

On November 1, 1906, the petitioners respectively demanded from the respondent proper credentials of their election, and such credentials were refused.

H. Parker (J. W. McAnarney with him,) for the petitioners.

L. D. Brandeis (E. S. Goulston with him,) for the respondent.

SHELDON, J. If we assume that a writ of mandamus may properly be issued to secure possession of such offices as are here in question, and that these petitions could be brought against the respondent alone although this would involve passing upon the rights of Tobin and Lovely without their being made parties or having any opportunity to be heard, yet we are of opinion that the petitions cannot be maintained.

The rights of all the members of this voluntary association must be settled according to the provisions of the constitution which they have adopted. *Reynolds v. Royal Arcanum*, 192 Mass. 150. Accordingly, before these petitioners can invoke the aid of the court to secure them in the offices to which they severally claim to have been

elected, it must be shown that they have exhausted the remedies available to them within the association and according to its rules. *Oliver v. Hopkins*, 144 Mass. 175. *Karcher v. Knights of Honor*, 137 Mass. 368. *Chamberlain v. Lincoln*, 129 Mass. 70. The general inspectors of elections have counted and passed upon the ballots cast at the election at which the petitioners claim to have been elected, and have made a majority and a minority report thereof. The general executive board have passed upon these reports, and have ordered a new election. The power of the board to take this action under the circumstances of these cases is disputed, and has been argued with much learning and at considerable length. But we have not found it necessary to pass upon this question; for if the action of the board was wrong, whether because they had no jurisdiction of the question or because they took an erroneous view of either the law or the facts, there was a further remedy open to the petitioners under the constitution by appeal under § 106 to a convention to be held under § 108. It is impossible to read this constitution without seeing plainly that it was intended and purported to supply a full system of government by which the rights of all its members and the rights and duties of all its officers among themselves should be determined and regulated, under the management and control of the general executive board, which, according to § 8, is to decide all questions of usage wherein the constitution is silent, but with a final and complete control in a convention to be held, subject to the desire of a majority of the local unions, in June of each year, or at any other time, upon vote of such a majority. In our opinion, according to the decisions above cited, it was the duty of the petitioners to exhaust their remedy by appeal to such a convention before coming into the courts.

Petitions dismissed.

Finlay v. City of Boston.

ALBERT W. FINLAY *et als.* v. CITY OF BOSTON *et al.*

SUFFOLK. 1907.

196 Mass. 267.

Mandamus.

A petition of twelve citizens of a city for a writ of mandamus to restrain an expenditure by the city alleged to be unlawful must be dismissed, because the remedy given by R. L., c. 25, § 100, to ten taxable inhabitants to maintain a suit in equity to restrain such an unlawful expenditure is exclusive.

Petition, filed in the Supreme Judicial Court for the county of Suffolk, March 22, 1906, for a writ of mandamus against the city of Boston and the superintendent of its municipal printing plant, commanding them to refrain from the use of the union label of the "Allied Printing Trades Council of Boston, Mass.," and commanding the superintendent "to refrain from extending any preference in employment in said office to members of said unions or discriminating in any manner against other citizens who may be applicants for positions in said office, not members of said unions."

The petition alleged that the city council of Boston in April, 1901, had passed a vote enacting as follows: "All printed matter hereafter done for the City of Boston shall, so far as it can legally do so, bear the imprint of the union label of the Allied Printing Trades Council of Boston, Mass."; that the use of such label was permitted by the Allied Printing Trades Council only in shops where members of labor unions were employed exclusively; that any employer so using such label was not permitted to employ other than union men in a shop or establishment where the label was used, and that, in recognition of the ordinance, the respondent superintendent was operating the city's printing plant as a union shop, so called; that he was unjustly and unlawfully discriminating in favor of

members of the unions and against other citizens of the city not members of said unions; that the use of the label on documents which the petitioners were obliged to receive from the city was "repugnant and obnoxious" to them and to other citizens not members of the unions; that the label was placed on the city printing and documents without lawful authority and in violation of the rights of the petitioners and other citizens; that the expenditure of the public moneys for the maintenance of such a plant, run in such a manner, was an abuse of corporate power, and unlawful, and that the ordinance requiring the use of said label was in violation of the constitutional rights of the petitioners and other citizens not members of said unions, and therefore invalid.

The respondents demurred to the petition and assigned as the third ground for the demurrer that if the petition was intended to prevent an abuse of corporate power or an illegal expenditure of public money, the petitioners' only remedy was in equity under the provisions of R. L., c. 25, § 100.

J. J. Feely (*R. Clapp* with him) for the petitioners.

P. Nichols, for the respondent.

LOWING, J. We are of opinion that the demurrer to the petition must be sustained for the second reason stated in the third assignment, to wit: Because the petition is intended to prevent an illegal expenditure of public money and therefore the petitioners' only remedy is under R. L., c. 25, § 100.

The point has not been taken in the case at bar that a demurrer does not lie to a petition for mandamus. Doubts have arisen before this upon that point by reason of the provision of R. L., c. 192, § 5, that upon the return of the order of notice "the person who is required to appear shall file an answer showing cause why the writ should not issue."

A petition for mandamus is in many cases a petition which ought to be sum-

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marily heard and disposed of if the petitioner is to have what he is entitled to. And we are of opinion that this provision in R. L., c. 192, § 5, was inserted to insure a speedy hearing on the merits, by requiring a completion of the pleadings on the return day, and that it was not intended to forbid the court's allowing the defendant to file a demurrer, if that is the ground on which he elects finally to put his case, or to set up in his answer the matters which would be the subject of an independent demurrer where he wishes to take issue both as to the right of the petitioner to relief on the allegation of the facts contained in the petition and as to the truth of those allegations. The following cases have heretofore been disposed of on demurrer without objection. *O'Connell v. Matthews*, 177 Mass. 518. *Perry v. Hull*, 180 Mass. 547. *Selectmen of Gardner v. Templeton Street Railway*, 184 Mass. 294. *Fowler v. Brooks*, 188 Mass. 64.

The substance of the complaint now before us is that the ordinance in question requiring the employment of union men to the exclusion of non-union men in the City Printing Department, "so far as it can legally do so," is void, and that for this reason, in the words of the petition, "The expenditure of the public moneys for the maintenance of such a plant, run in such a manner, is an abuse of corporate power and unlawful."

The petition is in effect a petition to

prevent the illegal expenditure of public money. The twelve citizens who bring this petition could have brought a petition under R. L., c. 25, § 100. The cases of *Spaulding v. Peabody*, 153 Mass. 129, *Prince v. Crocker*, 166 Mass. 347, indicate that such a petition could have been brought under the statute before the scope of it was enlarged by St. 1898, c. 490, now R. L., c. 25, § 100. We are of opinion that the matter here complained of is ground for a petition under that act.

It is settled that mandamus does not lie where there is any other adequate and effectual remedy. The earlier cases are collected in *Selectmen of Gardner v. Templeton Street Railway*, 184 Mass. 294, 297, 298. That case is not decisive against the right of these plaintiffs to maintain a petition for mandamus. The right which the plaintiffs in that case sought to enforce was a statutory one, while the right here in question is a right at common law.

But we are of opinion that it was the intention of the Legislature, in enacting R. L., c. 25, § 100, to make the remedy given by that act to ten taxable inhabitants for cases covered thereby, exclusive of other remedies. It follows that mandamus does not lie. See in this connection *State v. Board of Education*, 35 Vroom, 59; *Ellison v. Raleigh*, 89 N. C. 125, 130; *State v. Board of Supervisors*, 29 Wis. 79.

Petition dismissed.

III.

MINORITY OPINIONS IN MASSACHUSETTS LABOR CASES.

FREDERICK O. VEGELAHN *v.* GEORGE M. GUNTNER *et als.*¹

SUFFOLK. 1896.

167 Mass. 92.

FIELD, C.J., *dissenting*. The practice of issuing injunctions in cases of this kind is of very recent origin. One of the earliest authorities in the United States for enjoining in equity acts somewhat like those alleged against the defendants in the present case is *Sherry v. Perkins*, 147 Mass. 212, decided in 1888. It was found as a fact, in that case, that the defendants entered into a scheme by threats and intimidation to prevent persons in the employment of the plaintiffs as lasters from continuing in such employment, and in like manner to prevent other persons from entering into such employment as lasters; that the use of the banners was a part of the scheme; that the first banner was carried from January 8, 1887, to March 22, 1887, and the second banner from March 22, 1887, to the time of the hearing; and that the plaintiffs were injured in their business and property thereby. The full court say: "The act of displaying banners with devices, as a means of threats and intimidation to prevent persons from entering into or continuing in the employment of the plaintiffs, was injurious to the plaintiffs, and illegal at common law and by statute. Pub. Sts., c. 74, § 2. *Walker v. Cronin*, 107 Mass. 555. . . . The banner was a standing menace to all who were or wished to be in the employment of the plaintiffs, to deter them from entering the plaintiffs' premises. Maintaining it was a continuous unlawful act, injurious to the plaintiffs' business and property, and was a nuisance such as a court of equity will grant relief against. *Gilbert v. Mickle*, 4 Sandf. Ch. 357. *Springhead Spinning Co. v. Riley*, L. R. 6 Eq. 551."

Of the authorities cited in *Sherry v. Perkins*, *Gilbert v. Mickle* was a suit in equity by an auctioneer against the mayor of the city of New York, to restrain him and those acting under him from parading, placing, or keeping before the plaintiff's auction rooms a placard as follows: "Strangers, beware of mock auctions." A temporary injunction was issued, but on hearing it was dissolved. Notwithstanding what is said in the opinion of the Vice Chancellor, his conclusion is as follows: "I am satisfied that it is my duty to leave the party to his remedy by an action at law." *Springhead Spinning Co. v. Riley* is a well-known decision of Vice Chancellor Malins. The bill prayed that the defendants might be "restrained from printing or publishing any placards or advertisements similar to those already set forth." The defendants had caused to be posted on the walls and other public places in the neighborhood of the plaintiff's works, and caused to be printed in certain newspapers, a notice as follows: "Wanted all well-wishers to the Operative Cotton Spinners, &c., Association, not to trouble or cause any annoyance to the Springhead Spinning Company, Lees, by knocking at the door of their office until the dispute between them and the self-actor minders is finally terminated. By special order. Carrodus, 32, Greaves Street, Oldham." The case was heard upon demurrers. The Vice Chancellor says: "For the reasons I have stated, I overrule these demurrers, because the bill states, and the demurrers admit, acts amounting to the destruction of property." Of that case the court, in *Sherry v. Perkins*, say: "Some of the language in *Springhead Spinning Co. v. Riley* has been criticised, but the decision has not been overruled." The cases are there cited in which that

¹ For majority opinion in this case, see Labor Bulletin, No. 70, pp. 39-44.

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decision has been doubted or criticised. Of the decision this court, in *Boston Diatite Co. v. Florence Manuf. Co.* 114 Mass. 69, say: "The opinions of Vice Chancellor Malins in *Springhead Spinning Co. v. Riley*, L. R. 6 Eq. 551, in *Dixon v. Holden*, L. R. 7 Eq. 488, and in *Rollins v. Hinks*, L. R. 13 Eq. 355, appear to us to be so inconsistent with these authorities [authorities which the court had cited] and with well settled principles, that it would be superfluous to consider whether, upon the facts before him, his decisions can be supported." Much the same language was used by the justices in *Prudential Assurance Co. v. Knott*, L. R. 10, Ch. 142, a part of the head-note of which is "*Dixon v. Holden* and *Springhead Spinning Company v. Riley* overruled." In *Temperton v. Russell*, [1893] 1 Q. B. 435, 438, Lindley, L. J., says of the case of *Springhead Spinning Co. v. Riley*, that it was overruled by the Court of Appeal in *Prudential Assurance Co. v. Knott*.

Since the Judicature Act, however, the courts of England have interfered to restrain by injunction the publication or continued publication of libellous statements, particularly those injuriously affecting the business or property of another, as well as injunctions similar to that in the present case. St. 36 & 37 Vict. c. 66, § 25, subsect. 5, 8. *Monson v. Tussaud*, [1894] 1 Q. B. 671, 692. *Lyons v. Wilkins*, [1896] 1 Ch. 811, 827. But in the absence of any power given by statute, the jurisdiction of a court of equity having only the powers of the English High Court of Chancery, does not, I think, extend to enjoining acts like those complained of in the case at bar, unless they amount to a destruction or threatened destruction of property, or an irreparable injury to it.

In England, the rights of employers and employed, with reference to strikes, boycotts, and other similar movements, have not in general been left to be worked out by the courts from common

law principles, but statutes from time to time have been passed defining what may and what may not be permitted. The administration of these statutes largely has been through the criminal courts.

As a means of prevention, the remedy given by Pub. Sts., c. 74, § 2, would seem to be adequate where the section is applicable, unless the destruction of or an irreparable injury to property is threatened, and there is the additional remedy of an indictment for a criminal conspiracy at common law if the acts of the defendants amount to that. If the acts complained of do not amount to intimidation or force, it is not in all respects clear what are lawful and what are not lawful at common law. It seems to be established in this Commonwealth, that intentionally and without justifiable cause to entice by persuasion a workman to break an existing contract with his employer, and to leave his employment, is actionable, whether done with actual malice or not. *Walker v. Cronin*, 107 Mass. 555. What constitutes justifiable cause remains in some respects undetermined. Whether to persuade a person who is free to choose his employment not to enter into the employment of another person gives a cause of action to such other person, by some courts has been said to depend upon the question of actual malice, and in considering this question of malice it is said that it is important to determine whether the defendant has any lawful interest of his own in preventing the employment, such as that of competition in business. For myself, I have been unable to see that malice is necessarily decisive. I am not convinced that to persuade one man not to enter into the employment of another, by telling the truth to him about such other person and his business, is actionable at common law, whatever the motive may be.

Such persuasion, when accompanied by falsehood about such other person or his business, may be actionable, unless the occasion of making the statements

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is privileged, and then the question of actual malice may be important. This, I think, is the effect of the decision in *Rice v. Albee*, 164 Mass. 88. When one man orally advises another not to enter into a third person's employment, it would, I think, be a dangerous principle to leave his liability to be determined by a jury upon the question of his malice or want of malice, except in those cases where the words spoken were false. In the present case, if the establishment of a patrol is using intimidation or force within the meaning of our statutes, it is illegal and criminal; if it does not amount to intimidation or force, but is carried to such a degree as to interfere with the use by the plaintiff of his property, it may be illegal and actionable, but something more is necessary to justify issuing an injunction; if it is in violation of any ordinance of the city regulating the use of streets, there may be a prosecution for that, and the police can enforce the ordinance; but if it is merely a peaceful mode of finding out the persons who intend to go to the plaintiff's premises to apply for work, and of informing them of the actual facts of the case in order to induce them not to enter into the plaintiff's employment, in the absence of any statute relating to the subject I doubt if it is illegal, and I see no ground for issuing an injunction against it.

As no objection is now made by the defendants to the equitable jurisdiction, I am of opinion, on the facts reported, as I understand them, that the decree entered by Mr. Justice Holmes should be affirmed without modification.

HOLMES, J., *dissenting*. In a case like the present, it seems to me that, whatever the true result may be, it will be of advantage to sound thinking to have the less popular view of the law stated, and therefore, although when I have been unable to bring my brethren to share my convictions my almost invariable practice is to defer to them in silence, I depart from that practice in

this case, notwithstanding my unwillingness to do so in support of an already rendered judgment of my own.

In the first place, a word or two should be said as to the meaning of the report. I assume that my brethren construe it as I meant it to be construed, and that, if they were not prepared to do so, they would give an opportunity to the defendants to have it amended in accordance with what I state my meaning to have been. There was no proof of any threat or danger of a patrol exceeding two men, and as of course an injunction is not granted except with reference to what there is reason to expect in its absence, the question on that point is whether a patrol of two men should be enjoined. Again, the defendants are enjoined by the final decree from intimidating by threats, express or implied, of physical harm to body or property, any person who may be desirous of entering into the employment of the plaintiff so far as to prevent him from entering the same. In order to test the correctness of the refusal to go further, it must be assumed that the defendants obey the express prohibition of the decree. If they do not, they fall within the injunction as it now stands, and are liable to summary punishment. The important difference between the preliminary and the final injunction is that the former goes further, and forbids the defendants to interfere with the plaintiff's business "by any scheme . . . organized for the purpose of . . . preventing any person or persons who now are or may hereafter be . . . desirous of entering the [plaintiff's employment] from entering it." I quote only a part, and the part which seems to me most objectionable. This includes refusal of social intercourse, and even organized persuasion or argument, although free from any threat of violence, either express or implied. And this is with reference to persons who have a legal right to contract or not to contract with the plaintiff, as they may see fit. Inter-

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ference with existing contracts is forbidden by the final decree. I wish to insist a little that the only point of difference which involves a difference of principle between the final decree and the preliminary injunction which it is proposed to restore, is what I have mentioned, in order that it may be seen exactly what we are to discuss. It appears to me that the judgment of the majority turns in part on the assumption that the patrol necessarily carries with it a threat of bodily harm. That assumption I think unwarranted, for the reasons which I have given. Furthermore, it cannot be said, I think, that two men walking together up and down a sidewalk and speaking to those who enter a certain shop do necessarily and always thereby convey a threat of force. I do not think it possible to discriminate, and to say that two workmen, or even two representatives of an organization of workmen, do,—especially when they are, and are known to be, under the injunction of this court not to do so. See Stimson, Handbook to Labor Law, § 60, esp. pp. 290, 298, 299, 300; *Regina v. Shepherd*, 11 Cox C. C. 325. I may add, that I think the more intelligent workingmen believe as fully as I do that they no more can be permitted to usurp the State's prerogative of force than can their opponents in their controversies. But if I am wrong, then the decree as it stands reaches the patrol, since it applies to all threats of force. With this I pass to the real difference between the interlocutory and the final decree.

I agree, whatever may be the law in the case of a single defendant, *Rice v. Albee*, 164 Mass. 88, that when a plaintiff proves that several persons have combined and conspired to injure his business, and have done acts producing that effect, he shows temporal damage and a cause of action, unless the facts disclose, or the defendants prove, some ground of excuse or justification. And I take it to be settled, and rightly set-

tled, that doing that damage by combined persuasion is actionable, as well as doing it by falsehood or by force. *Walker v. Cronin*, 107 Mass. 555. *Morasse v. Brochu*, 151 Mass. 567. *Tasker v. Stanley*, 153 Mass. 148.

Nevertheless in numberless instances the law warrants the intentional infliction of temporal damage because it regards it as justified. It is on the question of what shall amount to a justification, and more especially on the nature of the considerations which really determine or ought to determine the answer to that question, that judicial reasoning seems to me often to be inadequate. The true grounds of decision are considerations of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and the general propositions of law which nobody disputes. Propositions as to public policy rarely are unanimously accepted, and still more rarely, if ever, are capable of unanswerable proof. They require a special training to enable any one even to form an intelligent opinion about them. In the early stages of law, at least, they generally are acted on rather as inarticulate instincts than as definite ideas for which a rational defence is ready.

To illustrate what I have said in the last paragraph, it has been the law for centuries that a man may set up a business in a country town too small to support more than one, although he expects and intends thereby to ruin some one already there, and succeeds in his intent. In such a case he is not held to act "unlawfully and without justifiable cause," as was alleged in *Walker v. Cronin* and *Rice v. Albee*. The reason, of course, is that the doctrine generally has been accepted that free competition is worth more to society than it costs, and that on this ground the infliction of the damage is privileged. *Commonwealth v. Hunt*, 4 Met. 111, 134. Yet even this proposition nowadays is disputed by a considerable body of per-

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sons, including many whose intelligence is not to be denied, little as we may agree with them.

I have chosen this illustration partly with reference to what I have to say next. It shows without the need of further authority that the policy of allowing free competition justifies the intentional inflicting of temporal damage, including the damage of interference with a man's business, by some means, when the damage is done not for its own sake, but as an instrumentality in reaching the end of victory in the battle of trade. In such a case it cannot matter whether the plaintiff is the only rival of the defendant, and so is aimed at specifically, or is one of a class all of whom are hit. The only debatable ground is the nature of the means by which such damage may be inflicted. We all agree that it cannot be done by force or threats of force. We all agree, I presume, that it may be done by persuasion to leave a rival's shop and come to the defendant's. It may be done by the refusal or withdrawal of various pecuniary advantages which, apart from this consequence, are within the defendant's lawful control. It may be done by the withdrawal, or threat to withdraw, such advantages from third persons who have a right to deal or not to deal with the plaintiff, as a means of inducing them not to deal with him either as customers or servants. *Commonwealth v. Hunt*, 4 Met. 111, 132, 133. *Bowen v. Matheson*, 14 Allen, 499. *Heywood v. Tillson*, 75 Maine, 225. *Mogul Steamship Co. v. McGregor*, [1892] A. C. 25.

I pause here to remark that the word "threats" often is used as if, when it appeared that threats had been made, it appeared that unlawful conduct had begun. But it depends on what you threaten. As a general rule, even if subject to some exceptions, what you may do in a certain event you may threaten to do, that is, give warning of your intention to do in that event, and

thus allow the other person the chance of avoiding the consequences. So as to "compulsion," it depends on how you "compel." *Commonwealth v. Hunt*, 4 Met. 111, 133. So as to "annoyance" or "intimidation." *Connor v. Kent*, *Curran v. Treleven*, 17 Cox C. C. 354, 367, 368, 370. In *Sherry v. Perkins*, 147 Mass. 212, it was found as a fact that the display of banners which was enjoined was a part of a scheme to prevent workmen from entering or remaining in the plaintiff's employment, "by threats and intimidation." The context showed that the words as there used meant threats of personal violence, and intimidation by causing fear of it.

I have seen the suggestion made that the conflict between employers and employed is not competition. But I venture to assume that none of my brethren would rely on that suggestion. If the policy on which our law is founded is too narrowly expressed in the term free competition, we may substitute free struggle for life. Certainly the policy is not limited to struggles between persons of the same class competing for the same end. It applies to all conflicts of temporal interests.

So far, I suppose, we are agreed. But there is a notion which latterly has been insisted on a good deal, that a combination of persons to do what any one of them lawfully might do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition. But in the general form in which it has been presented and accepted by many courts, I think it plainly untrue, both on authority and on principle. *Commonwealth v. Hunt*, 4 Met. 111. *Randall v. Hazelton*, 12 Allen, 412, 414. There was a combination of the most flagrant and dominant kind in *Bowen v. Matheson* and in the *Mogul Steamship Company's* case, and combination was essential to the success achieved. But it is not necessary to cite cases; it is

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plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combination, and that the organization of the world, now going on so fast, means an ever increasing might and scope of combination. It seems to me futile to set our faces against this tendency. Whether beneficial on the whole, as I think it, or detrimental, it is inevitable, unless the fundamental axioms of society, and even the fundamental conditions of life, are to be changed.

One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way. I am unable to reconcile *Temperton v. Russell*, [1893] 1 Q. B. 715, and the cases which follow it, with the Mogul Steamship Company case. But *Temperton v. Russell* is not a binding authority here, and therefore I do not think it necessary to discuss it.

If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has to support their interests by argument, persuasion and the bestowal or refusal of those advantages which they otherwise lawfully control. I can remember when many people thought that, apart from violence or breach of contract, strikes were wicked, as organized refusals to work. I suppose that intelligent economists and legislators have given up that notion to-day. I feel

pretty confident that they equally will abandon the idea that an organized refusal by workmen of social intercourse with a man who shall enter their antagonist's employ is wrong, if it is dissociated from any threat of violence, and is made for the sole object of prevailing if possible in a contest with their employer about the rate of wages. The fact, that the immediate object of the act by which the benefit to themselves is to be gained is to injure their antagonist, does not necessarily make it unlawful, any more than when a great house lowers the price of certain goods for the purpose, and with the effect, of driving a smaller antagonist from the business. Indeed the question seems to me to have been decided as long ago as 1842 by the good sense of Chief Justice Shaw, in *Commonwealth v. Hunt*, 4 Met. 111. I repeat at the end, as I said at the beginning, that this is the point of difference in principle, and the only one, between the interlocutory and the final decree. See *Regina v. Shepherd*, 11 Cox C. C. 325; *Connor v. Kent*, *Gibson v. Lawson*, *Curran v. Treleven*, 17 Cox C. C. 354.

The general question of the propriety of dealing with this kind of case by injunction I say nothing about, because I understand that the defendants have no objection to the final decree if it goes no further, and that both parties wish a decision upon the matters which I have discussed.

PAUL J. PLANT *et als.* v. HENRY K. WOOD *et als.*¹

HAMPDEN. 1900.

176 Mass. 492.

HOLMES, C.J., *dissenting*. When a question has been decided by the court, I think it proper, as a general rule, that a dissenting judge, however strong his convictions may be, should thereafter accept the law from the majority and

¹ For majority opinion in this case, see Labor Bulletin No. 70, pp. 44-57.

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leave the remedy to the Legislature, if that body sees fit to interfere. If the decision in the present case simply had relied upon *Vegelahn v. Guntner*, 167 Mass. 92, I should have hesitated to say anything, although I might have stated that my personal opinion had not been weakened by the substantial agreement with my views to be found in the judgments of the majority of the House of Lords in *Allen v. Flood*, [1898] A. C. 1. But much to my satisfaction, if I may say so, the court has seen fit to adopt the mode of approaching the question which I believe to be the correct one, and to open an issue which otherwise I might have thought closed. The difference between my brethren and me now seems to be a difference of degree, and the line of reasoning followed makes it proper for me to explain where the difference lies.

I agree that the conduct of the defendants is actionable unless justified. *May v. Wood*, 172 Mass. 11, 14, and cases cited. I agree that the presence or absence of justification may depend upon the object of their conduct, that is, upon the motive with which they acted. *Vegelahn v. Guntner*, 167 Mass. 92, 105, 106. I agree, for instance, that if a boycott or a strike is intended to override the jurisdiction of the courts by the action of a private association, it may be illegal. *Weston v. Barnicoat*, 175 Mass. 454. On the other hand, I infer that a majority of my brethren would admit that a boycott or strike intended to raise wages directly might be lawful, if it did not embrace in its scheme or intent violence, breach of contract, or other conduct unlawful on grounds independent of the mere fact that the action of the defendants was combined. A sensible workingman would not contend that the courts should sanction a combination for the purpose of inflicting or threatening violence or the infraction of admitted rights. To come directly to the point, the issue is narrowed to the question whether, assuming that some purposes would be a

justification, the purpose in this case of the threatened boycotts and strikes was such as to justify the threats. That purpose was not directly concerned with wages. It was one degree more remote. The immediate object and motive was to strengthen the defendants' society as a preliminary and means to enable it to make a better fight on questions of wages or other matters of clashing interests. I differ from my brethren in thinking that the threats were as lawful for this preliminary purpose as for the final one to which strengthening the union was a means. I think that unity of organization is necessary to make the contest of labor effectual, and that societies of laborers lawfully may employ in their preparation the means which they might use in the final contest.

Although this is not the place for extended economic discussion, and although the law may not always reach ultimate economic conceptions, I think it well to add that I cherish no illusions as to the meaning and effect of strikes. While I think the strike a lawful instrument in the universal struggle of life, I think it pure phantasy to suppose that there is a body of capital of which labor as a whole secures a larger share by that means. The annual product, subject to an infinitesimal deduction for the luxuries of the few, is directed to consumption by the multitude, and is consumed by the multitude, always. Organization and strikes may get a larger share for the members of an organization, but, if they do, they get it at the expense of the less organized and less powerful portion of the laboring mass. They do not create something out of nothing. It is only by divesting our minds of questions of ownership and other machinery of distribution, and by looking solely at the question of consumption, — asking ourselves what is the annual product, who consumes it, and what changes would or could we make, — that we can keep in the world of realities. But, subject to the quali-

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fications which I have expressed, I think it lawful for a body of workmen to try by combination to get more than they now are getting, although they do it at the expense of their fellows, and to that end to strengthen their union by the boycott and the strike.

EDWARD T. REYNOLDS *et als.* v. GEORGE H. E. DAVIS *et als.*¹

ESSEX. 1908.

198 Mass. 294.

KNOWLTON, C.J., *dissenting.* The opinion agreed to by a majority of the court in this case, seems to me erroneous in the grounds on which it purports to rest, and, if it should pass without comment, it would be, in my judgment, misleading. To most of the doctrines stated in it I heartily agree. With the final disposition of the case I am satisfied. If the decision were put on the ground that the strike was for a closed shop in the sense that the shop should be closed arbitrarily to all workmen not members of the union, not because such workmen were personally objectionable in any particular, nor because there was not work enough for all the members of the union if non-union men were employed, but to compel all workmen to join the union for the purpose of creating a monopoly in the labor market, whereby to be able to contend successfully with employers whenever a controversy should arise, I should cheerfully concur in it. A strike to compel a closed shop, merely to accomplish such a purpose, would not be justifiable on principles of competition, either as against non-union workmen or as against the employer, but would be unlawful for reasons stated in *Berry v. Donovan*, 188 Mass. 353, *Plant v. Woods*, 176 Mass. 492, and *Pickett v. Walsh*, 192 Mass. 572.

This opinion enters a field which has not been very much traversed by the courts. It holds this strike unlawful because of the rules and by-laws of the labor union. Rules and by-laws of labor

unions have not commonly received the animadversion of the courts, because, as regulations for the internal administration of the affairs of organizations established for a lawful purpose, they are usually designed, in a reasonable way, to promote the objects of the organization.

It is held universally in law, and is conceded generally in public opinion, that a labor union, established for the promotion of the interests of its members in a reasonable way, is a justifiable and commendable organization.

It is right that all the members of such a union should unite for the protection of the interests of every individual member. If the feeblest of its members has a just grievance as an employee against their common employer, it is proper that the whole combination should act together to obtain redress of the wrong. The most effectual way of enforcing the right of every member to just treatment from his employer, in reference to wages, hours of labor and other things affecting his interests, is by withholding the labor of the union until justice is done. To make this a potent inducement the union must be able to act as one body, and to hold every member to the performance of his duties to his fellow members, so that all may be a united force. Of course there must be a method of determining what action, if any, shall be taken by the union in any case of an alleged grievance. Such a determination cannot properly be made without an investigation of the facts. Such an investigation ordinarily would involve conferences with the employer, and negotiations to see whether he would consent to an improvement of the conditions, if they should appear to be unjust to the employee. Such conferences and negotiations, without which ordinarily no labor union would be justified in striking, call for a representative or representatives of the union to present its side of the controversy to the employer, and to act

¹ For majority opinion in this case, see Labor Bulletin No. 70, pp. 82-86.

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for the union in the maintenance of its interests against the opposite party. In such cases the employer and employee often come together as adverse parties, each contending for that which seems for his advantage. The final determination of the position to be taken by the union may be by a vote of its members. It may be by the action of a board of officers to whom the union intrusts this duty. In favor of the latter method is the fact that, in times of excitement, assemblies of men and women often act hastily under a misapprehension of the facts, and under an impulse of passion aroused by inflammatory appeals to their feelings. But, in one way or another, such determinations must be made, and must be treated as finally settling the position which the union is to take for itself, as a party dealing with an adverse party in reference to its supposed rights. Of course, if the employer takes a different view, neither is bound by the action of the other, and each may make any lawful effort to prevail in the contest with the other.

In the opinion the present strike is condemned because of the rules which govern the union. Under these, every grievance is to be investigated by the executive board of the council. Surely this is right and proper. If the employer refuses to do that which the executive board thinks he ought to do, the facts are reported by the board to the next meeting of the building trades council, with a recommendation that he be declared unfair. If he is then declared unfair by the building trades council, that is equivalent to a decision that he is in the wrong. It is then the duty of the executive board to again interview the employer, and if he fails to comply with the conditions that the building trades council deems just, a strike is to be declared and maintained by the union until he complies with these conditions.

It is to be noticed that this course of proceeding is entirely for the guidance

of the members of the union. The employer takes such measures and acts upon such principles as he chooses for his own guidance. If the result is a failure to agree, then each stands upon his rights, and it is a question which can force the other to yield, or how they can afterwards reach a compromise. The trades council is no more the arbiter of questions between individual employees and their employers than the employer is. The trades council, as a representative official board, decides for one party and determines its action, and the employer decides for the other party and determines his action. Neither assumes to determine anything for the other, but the action of each is governed by his or its own determination.

I do not see how any rule can be more just and proper for the guidance of a labor union when a dispute arises between its members, or any one of its members, and the employer. Suppose the case is a reduction of wages by the employer which the members of the union deem unjust. What more fair or equitable method of dealing with such a supposed injustice could be devised? To say that a strike founded on such a reduction is illegal because of a rule providing this method of dealing with the grievance, is, in my judgment, equivalent to saying that no labor union shall be permitted to do anything to promote the proper objects of its organization.

It is objected that the rule does not exclude questions arising under contracts subsisting between the employer and individual members of the union. Why should it exclude any question which arises under a complaint of an alleged grievance? Every member of the union is entitled to the support of his fellow members in regard to any question directly affecting his rights as an employee, if he is in the right and his employer is in the wrong. How can the union ascertain whether action should be taken in his behalf without an investigation? If the investigation should

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show that the aid which he seeks is to enable him to break a contract with his employer, it is to be assumed that the council would immediately decline to help him. If a strike should be ordered to compel an employer to submit to a breach of contract by one of his employees, such a strike would be illegal because it would be for an illegal object, not because of the method prescribed by the rules of the union for investigating the matter, or for declaring a strike. It must be assumed that these rules were adopted to be properly applied in proper cases. They do not purport to authorize the trades council to declare a strike for an illegal object. It is to be presumed that the council would refuse to declare a strike in any case in which the investigation showed that the desired object was illegal. In the present case there is no testimony nor suggestion that one of the purposes of the strike was to compel submission by an employer to a breach of his contract by an employee.

In framing rules for a labor union, it would be unreasonable and impracticable to mention expressly all possible cases in which a strike ought not to be ordered, and, in terms, to forbid action in all such cases.

I find nothing in this part of the rules and by-laws except that which I should expect to find in those of any well-organized labor union. I discover nothing in the master's report or the evidence to indicate that these rules were intended to be used for the unlawful promotion of a purely sympathetic strike, or that they ever were so used. I have endeavored to show that if any member of a union should have a grievance as an employee against his employer, even if it was not common to members of the union as a class, it would be the duty of his fellow-members, in accordance with fundamental principles of labor unionism, to unite for the redress of the

grievance, even by striking, if that should be necessary.

So far as appears, the posting and publication of the open shop rules, and the employment or attempt at employment of non-union men, which were the only matters complained of by the defendants, had a relation to members of each of the local unions before the court, as direct as it had to any other union men. Members of these unions were employed in the shops of the plaintiffs. If the ground of complaint had been a proper subject for adverse action by an individual workman, it would have been a proper subject for investigation and action by the union of which he was a member.

Because the opinion in this case makes the decision turn upon the rules and by-laws to which I have referred, I do not agree with it.

L. D. WILLCUTT & SONS CO. v. JEREMIAH J. DRISCOLL, *et als.*¹

SUFFOLK. 1908.

200 Mass. 110.

SHELDON, J., *dissenting*. The Chief Justice and I are unable to assent to the conclusion reached by the majority of the court. We cannot convince ourselves that under such circumstances as are here presented the defendants should be enjoined from imposing or threatening to impose fines upon those members of their organization who, by continuing to work for the plaintiff, had, under the rules to which they had themselves assented, become liable to such imposition. The question is one of great practical importance; it has been said that the law upon the subjects involved is not yet fully settled; and we think it proper to state the views which seem to us to be correct.

We assume that any defendants who have instituted or are carrying on an unjustifiable strike, or who for the prosecution and maintenance of a justifiable

¹ For majority opinion in this case, see Labor Bulletin No. 70, at page 87.

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strike are inducing workmen either to leave or to refrain from entering the employ of the plaintiff, by the use of means which are either unlawful in themselves or would operate as an interference with a superior right of the plaintiff, — who, that is, have combined either to secure an unlawful end or to secure a lawful end by the use of unlawful means, — may be restrained by injunction, at any rate from such specific wrongful acts in furtherance even of a lawful strike as are unjustifiable towards the plaintiff and are likely to cause such injury to the plaintiff as to warrant equity in interfering. It would not be material in such a case that there was no continuing contract of employment between the plaintiff and the servants who were thus induced to leave him, or that the employer was complaining of the action of the labor union in seeking merely to enforce its rules upon its own members, although no question arose between the union itself and workmen who desired to continue in their employment but who were coerced by the fear of fines or of other consequences that might follow their infraction of the rules of the union. See as to this general doctrine *Martell v. White*, 185 Mass. 255; *Vegetahn v. Guntner*, 167 Mass. 92; *Perkins v. Pendleton*, 90 Maine 166; *Boutwell v. Marr*, 71 Vt. 1; *Frank v. Herold*, 18 Dick 443; *Booth v. Burgess*, 65 Atl. Rep. 226; *Spaulding v. Evenson*, 149 Fed. Rep. 913; *Temperton v. Russell*, [1893] 1 Q. B. 715. Nor is it doubted that the promoters of a strike would have no right to persuade a laborer to violate any existing contract of employment with the plaintiff. *Beekman v. Marsters*, 195 Mass. 205, 210, and cases cited. *Reynolds v. Davis*, 198 Mass. 294. Nor would they have a right, by the threat of a fine or of any similar disciplinary measure, to prevent any one who was not a member of their union from working for the plaintiff. *Read v. Friendly Society*, [1902] 2

K. B. 88. *Haskins v. Royster*, 76 N. C. 601. *Angle v. Chicago, St. Paul, Minneapolis & Omaha Railway*, 151 U. S. 1. *Employing Printers' Club v. Doctor Blosser Co.* 122 Ga. 509. *South Wales Miners' Federation v. Glamorgan Coal Co.* [1905] A. C. 239. This is the fundamental doctrine of *Carew v. Rutherford*, 106 Mass. 1.

But the defendants' associations were lawful ones. The language of Knowlton, C.J., in *Reynolds v. Davis*, 198 Mass. 294, 302, states as to this point a universally recognized doctrine. No court would assert that the organization of a labor union constituted in itself an unlawful conspiracy. The objects aimed at by these unions were proper ones. Their main object, as stated in the constitution of one of them, the Bricklayers' Benevolent and Protective Union, is, "to unite all practical journeymen bricklayers working within the jurisdiction of this union, so that by concerted action their interests will be protected and their condition improved, and to render assistance to injured members, and also provide a proper burial for deceased members." The right of the defendants to form such combinations or unions for the purpose of protecting their interests and improving their condition by securing higher wages and shorter periods of labor, even in competition with other laborers, is undisputed. *Pickett v. Walsh*, 192 Mass. 572, 580. *Snow v. Wheeler*, 113 Mass. 179. *Carew v. Rutherford*, 106 Mass. 1, 10. *Commonwealth v. Hunt*, 4 Met. 111, 129.

Nor is there now any question that the defendants had the right through concerted action to attempt to secure the attainment of these lawful objects by means of a strike. If the end aimed at is lawful, the strike is lawful, and is not made unlawful by the fact that it is ordered and carried on by the action and through the instrumentality of a labor union. This is the express point of the decision in *Reynolds v. Davis*,

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198 Mass. 294, a decision which was made only some months ago, and which as to this point was concurred in by every member of the court, the only dissent being as to the lawfulness of the purpose of the strike which was there considered. This means and must mean that the members of a labor union who have engaged in a strike for a lawful purpose have a right to carry it on and to seek to make it effectual by the use of any means which are neither unlawful in themselves nor inconsistent with the exercise by others of any equal or superior rights.

It is conceded in this case that the defendants' strike was a lawful one, because it must be treated as instituted and carried on for the lawful purposes of obtaining higher wages and shorter periods of labor. We adopt as to this question what is said in the majority opinion. It follows accordingly that the defendants had a right not only to carry on their strike but to seek to make it successful by the use of whatever rightful means were available to them. And this seems to us to be the general doctrine of the cases. It has been upheld, either in terms or by necessary inference, in *Reynolds v. Everett*, 144 N. Y. 189; *Mills v. United States Printing Co.* 99 App. Div. (N. Y.) 605; *Rogers v. Evarts*, 17 N. Y. Supp. 264; *Downes v. Bennett*, 63 Kans. 653; *Longshore Printing Co. v. Howell*, 26 Ore. 527; *Gray v. Building Trades Council*, 91 Minn. 171. Indeed this proposition, as we understand, is not disputed by the majority; nor has it been denied by any authoritative judicial decision.

The plaintiff in the case before us has indeed, like every other employer of labor, a right to enjoy a free labor market, to have a free flow of labor come to him,—that is, he has a right to employ such men as are willing to work for him upon such terms as may be mutually agreed upon between him and them. The strongest statements of this right may perhaps be found in

some of the cases cited in the majority opinion. *Brennan v. Hatters of North America*, 44 Vroom, 729. *Jersey City Printing Co. v. Cassidy*, 18 Dick. 759, 765. *Atkins v. Fletcher Co.* 20 Dick. 658, 664. *Quinn v. Leathem*, [1901] A. C. 495, 534. But even these decisions follow the now universal current of authority in recognizing the right of the defendants to curtail and restrict this right of the plaintiff, by combining in labor unions to engage in a lawful strike for the improvement of their own conditions, and in endeavoring to render their strike successful by using all rightful means both to secure unanimity of action among their own members and to dissuade other laborers from entering the employ of the plaintiff. That is, the relative right of the plaintiff to enjoy a free labor market is modified and limited by the right of its employees to enter into an agreement or combination to secure higher wages or to improve otherwise the conditions of their employment, and for this purpose to engage in a strike and to use all rightful means to insure the success of their strike by checking, and if they can do so without resorting to wrongful means, by wholly stopping, the free flow of labor to the plaintiff. But, if this be so, manifestly the plaintiff's right to a free labor market is not only not a paramount right, but it is and must be subject to the higher right of the defendants to combine and to carry on a strike by the use of whatever lawful means may be in their power; and we cannot see how this right can be further limited than by restricting it to acts which are not forbidden by law, either as being unlawful in themselves or at variance with a sound public policy. Accordingly, the question now to be decided is whether we can say that the members of a labor union have no right, acting in conformity with rules previously established, to impose a fine upon one of their own members if he goes to work or continues to work for

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an employer against whom a justifiable strike has been declared in accordance with those rules, where there is no contractual right or duty on either side for the performance of such work.

If we are right in what thus far has been said, the answer to this question must depend upon whether the imposition of such a fine is either forbidden by some rule of law or is found to be inconsistent with some principle of public policy. But in our opinion neither of these affirmations can be made.

The right of all voluntary associations, whether formed for the carrying on of business or for purely social purposes, to establish appropriate by-laws and regulations, not only for their own internal management but also to regulate the conduct of their members towards each other and in matters affecting the general interests of the body, is conceded. And the right to enforce obedience to such by-laws and regulations by suitable penalties is generally recognized. See, besides many other cases that might be cited, *Rex v. Westwood*, 7 Bing. 1, 90; 2 Dow & C. 21; *Goulding v. Standish*, 182 Mass. 401; *McFadden v. Murphy*, 149 Mass. 341; *Smith v. Nelson*, 18 Vt. 511; *Mayer v. Journeymen Stonecutters' Association*, 2 Dick 519; *Brown v. Stoerkel*, 74 Mich. 269; *Wabash Railroad v. Hannahan*, 121 Fed. Rep. 563; *Martin v. Nashville Building Association*, 2 Coldw. 418. That provisions for fines to be imposed for conduct injurious to the members of such voluntary associations are not necessarily bad either as between the members themselves or as affecting the conduct of members towards third persons was assumed in *Bowen v. Matheson*, 14 Allen, 499. See p. 501. And although the manifest effect of the fine provided for in that case was to put at least a certain measure of coercion upon the individual members of the association to persist in conduct which had been found to be ruinous to the plaintiff's business, the

decision was restated and approved in *Plant v. Woods*, 176 Mass. 492, 500. The same may be said of other cases cited in that opinion. The suggestions as to the decision in *Bowen v. Matheson*, made in *Martell v. White*, 185 Mass. 255, and in the majority opinion in the case at bar, really go no farther than to say that such a fine is not necessarily unlawful; but that is exactly what is here contended for.

We cannot make the law to be enforced against labor unions in this respect more stringent than that which is applicable to other organizations established for proper purposes. Such unions are voluntary associations. They are formed for proper purposes. Their objects are not only lawful, but commendable. Like some other associations, the very purpose for which they are created makes it highly important that their members should be held together by the strongest possible bonds, so as to work with absolute unanimity, especially in the time of a trade dispute or strike. Pledges and promises binding all the members are desirable. Voluntary agreements to abide in such matters by the will of a majority of the members under a coercive pecuniary influence, or even under pain of expulsion, cannot be objectionable. Indeed, the right of labor unions to enforce, under penalty of fine or expulsion, compliance by all their members with rules and regulations which have been adopted because deemed by a sufficient majority to be for the common good and which are not in themselves inappropriate or unlawful, is necessary to their continued existence. It is to the united action of all their members that such organizations owe their strength and their ability to accomplish the results at which they aim. Doubtless persons who do not agree in the desirability of those results or in the wisdom or efficiency of the means adopted to secure them, cannot be required to continue as members against their will, any more than they could have

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been compelled to become members in the first instance. It is of the very essence of a voluntary organization that membership in it is and must continue to be itself voluntary; and this must be so on both sides as long as property rights do not come in question. *Plant v. Woods*, 176 Mass. 492, 502. *Flacus v. Smith*, 199 Penn. St. 128. *Longshore Printing Co. v. Howell*, 26 Ore. 527. So long, however, as such membership continues and the organization still serves the purpose for which it was created, "the will of the individual must," as was said by the court in *Wabash Railroad v. Hannahan*, 121 Fed. Rep. 563, "consent to yield to the will of the majority, or no organization whether of society into government, capital into combination, or labor into coalition, can ever be effectual. The individual must yield in order that the many may receive a greater benefit. The right of labor to organize for lawful purposes and by organic agreement to subject the individual members to rules, regulations and conduct prescribed by the majority, is no longer an open question in the jurisprudence of this country." So Taft, J., in *Thomas v. Cincinnati, New Orleans & Pacific Railway*, 62 Fed. Rep. 803, 817, after conceding the right of the employees of a receiver to organize themselves into a labor union which shall take joint action as to their terms of employment, and to elect officers to represent them, says: "The officers they appoint, . . . if they choose to repose such authority in any one, may order them, on pain of expulsion from their union, peaceably to leave the employ of their employer, because any of the terms of their employment are unsatisfactory." In *Mayer v. Journeymen Stonecutters' Association*, 2 Dick. 519, it appeared that members of the defendant association were practically compelled to acquiesce in the decision of the majority and to join in strikes or abstain from working for particular employers by forfeiture of

membership consequent upon being declared "scabs"; and this was not interfered with by the court, no other coercion or actual violence having been used. The same rule was applied in *Brown v. Stoerckel*, 74 Mich. 269, to persons suspended from a labor union for not joining in a strike. The validity of such rules as are here in question and of penalties to be imposed under them after due notice and hearing in conformity to the rules was either declared or recognized and assumed in *Pickett v. Walsh*, 192 Mass. 572, 575; *Fuerst v. Musical Mutual Protective Union*, 95 N. Y. Supp. 155; *Burns v. Bricklayers' Benevolent & Protective Union*, 14 N. Y. Supp. 361; *Master Stevedores' Association v. Walsh*, 2 Daly, C. P. 1; *Froelich v. Musicians Mutual Benefit Association*, 93 Mo. App. 383; and *Moores v. Bricklayers' Union*, 23 Weekly Law Bulletin (Ohio) 48. In *Quinn v. Leatham*, [1901] A. C. 495, the fines imposed were not treated as in themselves objectionable, but the decision was put upon the ground that the defendants had acted, not for any purpose of advancing their own interests as workmen, but for the sole purpose of injuring the plaintiff in his trade. See language of Lord Stroud, p. 514. So in *Brennan v. United Hatters*, 44 Vroom, 729, it was assumed that the imposition of fines, even up to the amount of \$500, might be lawful; but the case turned upon the fact that the plaintiff had not had such notice and trial as were guaranteed to him by the rules of the union. In *Booth v. Burgess*, 65 Atl. Rep. 226, the object of the fines was to enforce a strike which was merely sympathetic or in the nature of a boycott, such as was held to be unjustifiable in *Pickett v. Walsh*, 192 Mass. 572. In *Purvis v. United Brotherhood*, 214 Penn. St. 348, a strong decision against the coercion of an employer by sympathetic strikes against his customers, it was assumed throughout the opinion that the officers of the labor union would

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not have been prevented from enforcing by peaceful means upon their own members the rules of the union forbidding its members to work upon non-union material; and this would include the right to impose the penalties established by those rules. In *Mogul Steamship Co. v. McGregor*, 23 Q. B. D. 598, affirmed on appeal in [1892] A. C. 25, it appeared that conformity to the rules of the association was enforced by a penalty of dismissal, a severer and more drastic remedy than a mere pecuniary penalty, which practically could usually be enforced only by expulsion, and this fact was relied upon by the plaintiff upon the appeal (p. 30); but both Lord Watson and Lord Morris declined to treat this threat of expulsion as involving any wrongful intimidation (pp. 43, 49, 50). Indeed, we do not understand it to be denied that those members of the unions who declined to join in the strike which was ordered were liable to expulsion by the unions acting in good faith; and as it appears that the defendants are pecuniarily irresponsible, payment of the fines threatened could have been enforced only by expulsion. And the member of a union upon whom such a fine has been lawfully imposed in accordance with by-laws to which he has himself previously assented, is in no respect in the predicament of a highwayman's victim who has the bare option of parting with his money to save his life or of losing his life without thereby saving his money. The situation of one who finds himself compelled to choose between two alternatives, however distasteful, which he has brought upon himself and neither of which is unlawful, is in no way comparable to that of one who is compelled by wrongful force to elect between submitting to one of two alternative injuries, both of which are unlawful. An argument which rests upon such a comparison is without foundation.

Nor can we say that the imposition of fines, not in themselves unlawful and

not injurious to the plaintiff except as they restrict an inferior right by the lawful exercise of a higher right, is to be regarded as contrary to a sound public policy. Gloomy vaticinations of injurious results to be apprehended from the excessive power which labor unions may acquire by their combination of many individuals into one body do not greatly impress us. The power of capital hitherto has not been found insufficient to prevent other than proper advantages from being gained by the representatives of labor, nor does it seem to us likely to be insufficient in the future. If it shall appear that there is such a danger, yet we cannot alter the law by denying to labor unions the rights and powers which the law gives to all lawful associations.

The law does not do so vain a thing as to allow the formation of labor unions and to declare their right to initiate and by lawful means to carry on a justifiable strike, and then refuse them the use of the only practical means by which their acknowledged rights can be secured. And see, beside the cases already cited, *Cote v. Murphy*, 159 Penn. St. 420, 430; *Bohn Manuf. Co. v. Hollis*, 54 Minn. 223; *Macaulay Brothers v. Tierney*, 19 R. I. 255. The books are full of cases recognizing the right of labor unions to enforce their rules upon their members in a reasonable way. There are but few cases that discuss by-laws authorizing the imposition of fines for a violation of rules; for their validity is almost universally conceded. It is believed that most of the many thousand labor unions in this country and Great Britain have such a rule or by-law, under which they are acting to-day without complaint from any one. In such action they are in our judgment simply adopting a principle which is of general application for similar purposes.

It is true of course that no man lawfully can be compelled at the mere dictation of other men to abstain from

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working for such prices and during such periods of labor as he may be willing to accept; but it is no less true that when one chooses voluntarily to unite with others of the same craft in forming an organization for the purpose of bringing about by the united action of all its members more favorable conditions of employment, he is bound, so long as he desires to remain a member of that organization, to submit within certain limits his own freedom alike of judgment and of action to the judgment of his associates, and to conform his conduct to that standard which they shall have agreed to be for the best interest of all and of each. Unity of action would be impossible upon any other terms. Accordingly, all the members of such a body have a right to expect, and by reasonable rules and appropriate penalties to provide for, the observance of such terms. Those who desire to employ the members of such organizations must expect this to be the case, and have no right to complain of the requirements of such rules, and of their reasonable enforcement upon each other by the members of such organizations. To this extent, the employer's relative right to a free labor market must yield to the higher right of the laborers to combine and to act in unison for the purpose of obtaining better terms from their employer. In other words, the general right of an employer to go into the market to hire laborers does not deprive a union, in carrying on a lawful strike, of the right to use upon its individual members, for the purpose of keeping them up to the performance of their duty as such members, all the influences that any other organization properly could use, including the imposition of fines. The right to use such influences is an independent and paramount right. The interests of the employer are subordinate to this right, and must yield to it.

Doubtless this power of discipline by fines or by the ultimate penalty of

expulsion cannot properly be resorted to for the purpose of requiring conduct intrinsically unlawful, or for the purpose of compelling a minority member to join in action the ultimate object of which is to damage a third person. *Ertz v. Produce Exchange Co.* 82 Minn. 173. Just as the rules of an association cannot protect its members who have done actionable injury to a third person, so a plaintiff who has suffered injury by the enforcement of its rules and penalties upon its own members for a wrongful purpose may properly be allowed a remedy. *Carew v. Rutherford*, 106 Mass. 1, 10. If a strike should be declared for an unlawful object, it would be illegal because of its object; and all the members trying to maintain it by direct or indirect action against the employer might be liable in damages and subject to injunction. They would be so liable just as much without a by-law authorizing the imposition of fines as with one. Any labor organization acting against an employer to prevent him from carrying on his business is acting unlawfully if its action is without legal justification. The case of *Boutwell v. Marr*, 71 Vt. 1, might well have been put upon this ground; and in our opinion our own case of *Martell v. White*, 185 Mass. 255, should have been rested upon a similar doctrine. But if the object of a strike is legal and commendable, an effort to keep the members together by the imposition of fines, if need be, under a by-law previously adopted, is also legal and commendable.

The only cases that we have found which in principle are contrary to our conclusions are *Boutwell v. Marr*, 71 Vt. 1, the reasoning of which we regard as ill-considered and erroneous, and *Martell v. White*, 185 Mass. 255, in which a majority of this court followed the Vermont decision. But in *Martell v. White* it was assumed (p. 262) that the fine was "so large as to amount to moral intimidation or coercion," and was "used as a means to enforce a right

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not absolute in its nature but conditional," and was "inconsistent with the conditions upon which the right" rested. None of these conditions are applicable here. The findings made in this case went no further than that some coercion was exercised upon the striking members of the unions by their apprehension of fines. We have seen that the fines which were threatened were not in themselves unlawful, were in accordance with the by-laws of the unions of which the strikers were members, and were imposed in conformity with a right which was paramount to any inconsistent right of the plaintiff. We do not consider that the point actually decided in *Martell v. White* was necessarily inconsistent with the view here taken. So far, however, as the general doctrine of that case is applicable to fines imposed for a violation of rules lawful in themselves and not sought to be enforced for a purpose either strictly unlawful or opposed to public policy or inconsistent with the general welfare of the community, we are not willing to follow it. We do not think that the court can distinguish between the coercive effect of larger and smaller fines, or say as matter of law that they do, by reason merely of their magnitude, amount to moral intimidation. All fines are necessarily coercive in their operation, if they have any effect whatever. The statement that they may simply call the attention of a member of an organization to the fact of the infringement of some innocent regulation, or serve as an extra incentive to the performance of some absolute duty, we understand to be, and to have been manifestly intended to be, a concession that the degree of coercion which they exert in some instances may be a proper one. Perhaps unreasonable or excessive fines sometimes might be found to amount to intimidation; but we think it better to say that such fines as are here in question, not found to be excessive in amount, are not to be declared to be unreasonable or unlawful where

they are imposed under rules or by-laws which are themselves proper and reasonable, are imposed for justifiable purposes, and are well adapted to serve useful ends for a paramount interest of the parties whose conduct they are to guide, and do not interfere with any absolute or superior right of a third person, or work an injury to his relative rights disproportionate to the good aimed at and reasonably expected to come by reason of them to the members of the association. *Downs v. Bennett*, 63 Kans. 653.

To repeat what has already been said in substance, what seems to us the fallacy of the majority opinion is its failure to act upon the fact that the strike in this case was upon justifiable grounds, and of course was lawful. It follows that the action of each member of the union in trying to maintain the strike, without force, or wrongful coercion or intimidation exercised upon any one, was justifiable and lawful. It was not an interference with the rights of the plaintiff, because, as we have seen, the right of an employer to conduct his business without interference in the labor market is subordinate to the right of his employees to strike and to maintain the strike in a lawful manner. As against this right of the employees the employer has no right to have their labor flow to him uninfluenced or undiverted.

Accordingly, we are of opinion that the decree of the Superior Court should be affirmed.

LORING, J. For the reasons stated in the opinion of Mr. Justice Sheldon I should agree with the conclusions there reached were it not for the recent decision made by this court in *Martell v. White*, 185 Mass. 255.

The agreement in *Martell v. White*, was not an agreement or combination of laborers to better their condition, but an agreement between certain manufacturers, quarriers and polishers of granite to buy and sell to and to work for

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each other to the exclusion of other granite manufacturers, quarriers and polishers. This court held such an agreement to be a valid one. Whether that agreement was a valid one is not now up for decision. For the purposes of this discussion I take *Martell v. White* to be a decision as to what means may be lawfully used to enforce a legal agreement.

In my opinion the decision in *Martell v. White* ought not to be overruled in the case at bar although it was wrong, provided laborers and labor unions will not suffer injustice from our standing by it.

The evils which ensue from overruling a wrong decision where no injustice is involved in following it are greater than those which come from standing by it. It would be hard to measure the disastrous consequences to the administration of justice if it were thought that a change in the personnel of the court is to be the occasion for rearguing what has been decided.

The decision in *Martell v. White* will not (in my opinion) work injustice to employees and labor unions if it is confined to the point there decided and is not extended to broader propositions.

These broader propositions are as follows: (1) That employees have a right to combine to better their condition and to do all acts (not unlawful) necessary to make the combination an efficient one. (2) That they have a right to strike to gain that end if their demands therefor are not granted by their employer, and to do all acts (not unlawful) necessary to make the strike successful. And (3) that these rights of the employees are superior to the right of the employer to have a free flow of labor in his business.

There is nothing in the decision in *Martell v. White*, or in the decision in the case at bar, which calls in question these propositions or any one of them.

All that was decided in *Martell v. White* and all that is up for decision

in the case at bar is that the imposition of a fine is the use of unlawful means.

It was not decided in *Martell v. White* that in case a member of a labor union (which has instituted a strike to get higher wages, for example) goes to work for the employer in question at the old rate, he cannot be expelled.

Neither was it decided in *Martell v. White* that since the labor union, in the case put above, can expel such a member, it cannot, if he goes to work for the old rate of pay, threaten to expel him for the purpose of keeping him in the ranks of the labor union, that is to say, in the ranks of the strikers.

Further, it was not decided in *Martell v. White* that if a member in the case put above is subject to expulsion because he has deserted the union and gone to work for the lower rate of pay, the union is not at liberty to impose upon him the payment of a sum of money for the common benefit as a condition of his reinstatement. In such a case the union is not bound to expel the deserter. It is at liberty to take him back. On the other hand, since it can expel him and at the same time is at liberty to take him back, it can take him back on such terms as it may choose to impose, including the payment of a sum of money to the union for the common benefit.

And finally, since it may do this it may threaten to do this to keep such a fellow member from going back to work at the old lower rate of pay. There is nothing in *Martell v. White* which denies or pretends to deny this right to a labor union.

A payment imposed upon a deserting member of a labor union under the circumstances stated above is not, using words accurately, a fine. The difference is that a fine is imposed upon a former member for breaking the by-laws while he was a member, and can be collected whether the deserting member returns to the ranks of the union or not, while such a sum as is described above is a

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condition of the reinstatement of a member who has been expelled or is subject to expulsion, and cannot be collected if the member does not choose to be reinstated.

But although there is a difference between a fine and such a payment as is described above, the difference between the two is of no practical consequence to labor unions. So long as a labor union can impose upon a member who is subject to expulsion the payment of a sum of money as a condition of his reinstatement, the right to impose a fine (giving to that word its accurate meaning) is of no practical consequence. No labor union in the past ever attempted to collect a fine from a member who had left the union and did not seek reinstatement. And no labor union will ever find it worth while to enter on such litigation. The game is not worth the

candle. It is because the difference between these two things is not of practical consequence that I think that *Martell v. White* should not be overruled. What we are dealing with in the case at bar are the practical rules which govern strikes properly instituted for a proper purpose. If a wrong decision has been made, it had better stand if it does not work injustice. As I have said, if the decision in *Martell v. White* is not extended it does not work injustice, and for that reason (in my opinion) it ought not to be overruled in the case at bar.

I am of opinion that the case at bar is covered by the decision in *Martell v. White*. Further that the decision in *Martell v. White* ought not to be overruled in this case, and that the plaintiff is entitled to the decree stated in the opinion of a majority of the court.

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No. 24, November, 1902. Employment and Earnings, October, 1902 — Classes Occupied in Massachusetts Manufactures — Directory of Labor Organizations in Massachusetts.

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